

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION NO. 83-2864 SA

ROSE D. and ANTONIO CIPOLLONE,
her husband,

Plaintiffs,

vs.

LIGGETT GROUP, INC., a Delaware
Corporation; PHILIP MORRIS
INCORPORATED, a Virginia
Corporation; LOEWS THEATRES,
INC., a New York Corporation,

Defendants.

: Deposition of:

: JAMES C. BOWLING

Property of: Ness, Motley
Main PI File Room
Charleston, SC

TRANSCRIPT of testimony as taken by and before
NANCY C. BENDISH, a Certified Shorthand Reporter and
Notary Public of the State of New York, at the
offices of Philip Morris, 100 Park Avenue, New York,
New York, on Wednesday, December 19, 1984 commencing
at 9:40 in the forenoon.

A P P E A R A N C E S:

BUDD, LARNER, KENT, GROSS,
PICILLO & ROSENBAUM

33 Washington Street
Newark, New Jersey 07102

BY: DAVID R. GROSS, ESQ.
DAVID J. NOVACK, ESQ.

For the Plaintiffs

WILENTZ, GOLDMAN & SPITZER

900 Route 9 Box 10
Woodbridge, New Jersey 07095

BY: MORRIS BROWN, ESQ.

For the Plaintiffs

PORZIO, BROMBERG & NEWMAN

163 Madison Avenue
CN 097
Morristown, New Jersey 07960

BY: MARC Z. EDELL, ESQ.
For Rose D. Cipollone and Antonio Cipollone

WEBSTER & SHEFFIELD

1 Rockefeller Plaza
New York, New York 10020

BY: FRANCIS K. DECKER, JR., ESQ.
For Liggett Group, Inc.

GREENBAUM, GREENBAUM, ROWE, SMITH,
BERGSTEIN, YOHALEM & BRUCK
Engelhard Building

P.O. Box 5600
33 Wood Avenue South
Woodbridge, New Jersey 07095

BY: ALAN S. NAAR, ESQ.
For Liggett Group, Inc.

A P P E A R A N C E S: (Continued)

SHOOK, HARDY & BACON
20th Floor
Mercantile Bank Tower
1101 Walnut
Kansas City, Missouri 64106
BY: ROBERT E. NORTHRIP, ESQ.
DAVID K. HARDY, ESQ.
STEVEN C. PARRISH, ESQ.
For PHILIP MORRIS, INC.

BROWN, CONNERY, KULP, WILLE,
PURNELL & GREENE
Parkade Building
518 Market Street
P.O. Box 1449
Camden, New Jersey 08101
BY: RAYMOND F. DROZDOWSKI, ESQ.
MICHAEL J. VASSALOTTI, ESQ.
For Philip Morris, Inc.

SILLS, BECK, CUMMIS, ZUCKERMAN,
RADIN & TISCHMAN, P.A.
33 Washington Street
Newark, New Jersey 07102-3179
BY: BARRY L. SHAPIRO, ESQ.
JOEL C. BALSAM, ESQ.
BARRY M. EPSTEIN, ESQ.
For Loews Theatres, Inc.

RENATE STALEY
Paralegal - Porzio, Bromberg & Newman
MICHELE BROWN
Paralegal - Porzio, Bromberg & Newman

INDEX

WITNESS

DIRECT

JAMES C. BOWLING
Mr. Edell

326

E X H I B I T S

NUMBER

DESCRIPTION

IDENTIFICATION

Bowling-30	Maxwell Consumer Service Document Entitled "Tobacco Conference" from June 5 through 6/11/75	326
------------	--	-----

Bowling-31 Letter Dated 3/19/64 337
from Carl Thompson, with
Attached Letter Dated 2/28/64

Bowling-32 Letter Dated 6/16/70 from 337
H. H. Ramm to Addison Yeaman.

Bowling-33 Letter Dated 6/1/70 from 337
Addison Yeaman to Henry Ramm.

Bowling-34 Letter Dated 5/21/81 from 358
Mr. Whittingham with
Attached Letter Dated 4/24/81

Bowling-35 Letter Dated 5/26/81 from 358
Mr. Bowling to Mr. Gardner.

Bowling-36 List of Scientists who 371
received new or continuing
grants the Tobacco
Industry Research Committee.

Bowling-37 Memorandum Dated 11/23/64 406
from Mr. Bowling to Mr. Kibbee.

Bowling-38 Presentation made by 411
Paul A. Marks, M.D. on 12/10/80

E X H I B I T S
(Continued)

Bowling-39 Document entitled "Comments 415
on AMA-ERF Program for
Tobacco and Health from
the Research Directors of
the Supporting Companies."

1 J A M E S C. B O W L I N G,

2 previously sworn.

3 (Exhibit Bowling-30 marked for
4 identification)

5 DIRECT EXAMINATION BY MR. EDELL (Continued):

6 Q. Good morning. Do you realize you're
7 under oath?

8 A. Yes, I do.

9 Q. The same admonitions that I gave to you
10 yesterday are applicable today. Do you want me to
11 go through them again?

12 A. Why don't you.

13 Q. If any of my questions are unclear, you
14 don't understand them in the way that they're
15 phrased, please tell me and I'll try to retrace the
16 question.

17 A. Thank you.

18 Q. If you don't know the answer to a
19 question, tell us that you don't know.

20 A. All right, thank you.

21 Q. If you don't recall a particular fact,
22 tell us that. Otherwise we are going to presume
23 that once you give us an answer you understood the
24 question and you are accurately responding to it.

25 A. Thank you.

1 Q. If at any point in time any of the
2 attorneys have an objection, please hold your
3 response until they've had their opportunity to
4 place their objection on the record, at which point
5 in time they may or may not indicate that you should
6 answer the question. You therefore obviously should
7 follow their direction if they represent you.

8 A. Thank you, Mr. Edell.

9 Q. If at any point you want to take a break,
10 please feel free to do so. If you want to consult
11 with Mr. Northrip, Mr. Vassalotti, any of the other
12 lawyers who represent you, please feel free to do so.

13 A. Thank you.

14 Q. Did you have an opportunity to speak with
15 your lawyers yesterday subsequent to the deposition?

16 A. Yes, we talked briefly.

17 Q. Did you review any documents subsequent
18 to the deposition yesterday?

19 A. No.

20 Q. How long did you meet with your lawyers?

21 A. A matter of several minutes.

22 Q. Did you review anything yesterday or
23 speak to anyone other than the lawyers as you just
24 referred to concerning this deposition?

25 A. No.

1 Q. Mr. Bowling, I spoke to you yesterday
2 about Mr. Shinn's participation as a representative
3 of the tobacco industry at hearings held -- I'm
4 sorry. As a public spokesperson on behalf of the
5 industry. Do you remember our discussion with
6 regard to Maxwell Associates?

7 MR. NORTHRIP: Object to the form of the
8 question, if that is a question. The reference to
9 Mr. Shinn as a public spokesperson.

10 Q. Do you remember our discussing that, sir,
11 yesterday?

12 A. Yes, I remember yesterday you discussed a
13 security analyst meeting with Jack Maxwell who is an
14 industry analyst. Is that the one you refer to?

15 Q. That's correct. And that was the 1970
16 meeting at which Mr. William Shinn appeared; is that
17 correct?

18 A. I don't recall the date. I do remember your
19 pointing that out to me.

20 Q. I show you Bowling-24 for identification
21 and see if that refreshes your recollection, sir.

22 A. Thank you.

23 Did you want me to read this?

24 Q. No. I just wanted to see whether that
25 would refresh your recollection as to the meeting

1 before the security analysts that we discussed
2 yesterday, the date of that meeting.

3 A. Well, the date that appears on this document
4 you've given me is --

5 Q. 1970?

6 A. Yes, that's correct, 1970.

7 Q. And I think yesterday you said that that
8 was the only meeting that you could recall at which
9 a representative of Shook, Hardy acted as a
10 spokesperson on behalf of the industry at such a
11 meeting; is that correct?

12 MR. NORTHRIP: I object to that as
13 misstating Mr. Bowling's testimony.

14 Q. Is that correct, sir? You may answer,
15 correct, Mr. Northrip?

16 MR. NORTHRIP: That's correct.

17 A. I don't remember any person from Shook, Hardy
18 acting as spokesman.

19 Q. Do you have any understanding as to why
20 Mr. Shinn appeared at that proceeding, the 1970
21 proceeding?

22 A. Do I have any understanding?

23 Q. Yes.

24 A. Well, if I read Mr. Maxwell's introduction,
25 perhaps that might explain.

1 MR. NORTHRIP: Mr. Bowling, let me
2 instruct you that if you have a recollection, if
3 this refreshes a recollection you have, then you may
4 give that testimony. But you don't need to give as
5 your testimony what that document says.

6 THE WITNESS: All right, thank you, Mr.
7 Northrip.

8 Now, you want to repeat your question in
9 light of the instruction I've just received.

10 Q. Do you know why Mr. Shinn was speaking at
11 this meeting of security analysts?

12 A. Do I know why he spoke in 1970? No, I do not.

13 Q. Did the firm of Shook, Hardy & Bacon
14 represent Philip Morris back in 1970?

15 A. Yes.

16 Q. Did the firm of Shook, Hardy & Bacon
17 represent the Tobacco Institute at that time?

18 A. I don't think so. I don't know that.

19 Q. Do you know whether the firm of Shook,
20 Hardy & Bacon represented any other member of the
21 tobacco industry at that time?

22 A. I do not know.

23 Q. You told us that that was the only
24 meeting that you recalled at which a representative
25 of Shook, Hardy spoke to security analysts; is that

1 correct, sir? Do you remember that testimony?

2 A. I don't recall any member of Shook, Hardy
3 speaking anywhere as a matter of fact. You have
4 shown me this document which tells me that Mr. Shinn
5 spoke on this occasion.

6 Q. I thought you said yesterday that that
7 was the only such meeting that you thought was held
8 by the New York security analysts; is that correct?

9 A. To my knowledge.

10 Q. Do you remember any other meetings held
11 by Maxwell Associates at which a representative of
12 Shook, Hardy spoke?

13 A. Do I remember? No, I do not.

14 Q. I'm going to show you Bowling-3 for
15 identification. It appears to be Maxwell Consumer
16 Services Report. It's entitled, "The Tobacco
17 Conference" from June 5 through June 11, 1975,
18 excerpts from smoking and health session. Are you
19 familiar with that, sir?

20 A. No.

21 MR. VASSALOTTI: What is that exhibit
22 number?

23 MR. EDELL: Exhibit No. 30.

24 Q. Do you know a Donald K. Hoel?

25 A. Yes, I know Don Hoel.

1 Q. Who is he, sir?

2 A. He's an attorney with Shook, Hardy.

3 Q. Has he represented the Tobacco Institute?

4 A. Has he what?

5 Q. Has he represented the Tobacco Institute?

6 A. I don't know.

7 Q. Has he represented Philip Morris?

8 A. Yes, he has done work for Philip Morris.

9 Q. We discussed yesterday a Dr. Louis Soloff.
10 You recall that name, correct, sir?

11 A. I remember our discussion of Dr. Soloff's name,
12 yes.

13 Q. And you recall my asking you whether or
14 not you knew that Dr. Soloff received over \$188,000
15 between 1962 and 1969 from the TIRC? Do you
16 remember me asking that question?

17 A. I remember your asking me only questions about
18 a number of scientists. No, I didn't know that or
19 any other.

20 Q. I think you've told us that you knew Dr.
21 Aviado, knew of him?

22 A. Knew of Dr. Aviado.

23 Q. Did you know that Dr. Aviado received
24 over \$100,000 from the TIRC between '64 and '67?

25 A. No.

1 Q. Do you know of a Dr. Langston?

2 A. Dr. Langston?

3 Q. Hiram T. Langston?

4 A. I've heard of Dr. Langston. He's an expert.

5 Q. On what, sir?

6 A. Health matters.

7 Q. Do you recall him ever testifying?

8 A. I remember Congressional testimony.

9 Q. I'm going to show you this document which
10 we marked as Bowling Exhibit 30 and see if it
11 refreshes your recollection with respect to the
12 conference that was held between June 5 and June 11,
13 1975.

14 A. Would you like to have this other document back,
15 Mr. Edell?

16 Q. Yes.

17 MR. NORTHRIP: While Mr. Bowling is
18 looking at the document I'd like to go off the
19 record for a moment.

20 (Discussion held off the record)

21 A. It's very interesting, thank you.

22 Q. Does that refresh your recollection, sir,
23 with respect to Mr. Hoel?

24 A. No.

25 Q. Have you ever seen that document before?

1 A. I don't recall.

2 (Witness examining document)

3 Q. Why was there a transcript made up by the
4 Tobacco Institute?

5 A. Well, you told me not to suppose. I think I
6 could probably guess pretty accurately but you told
7 me not to do that. I don't know specifically.

8 Q. Well, if there was a practice at the
9 Institute to make up transcripts of various
10 proceedings, then you can tell me that it was the
11 routine to do that. I think that would be
12 appropriate, wouldn't it, Mr. Northrip?

13 MR. NORTHRIP: I would agree with that,
14 but not to guess.

15 A. Do you have a question?

16 Q. Was it the routine practice for the
17 Tobacco Institute to prepare transcripts of
18 proceedings such as those reflected in Bowling-24
19 and 30?

20 A. It was the practice of the Tobacco Institute to
21 make available to the industry all matters related
22 to smoking and health including pro and con, charges
23 against smoking, the statements of the eminent
24 scientists such as those whose comments are
25 reprinted in this document you've given me.

1 Q. Do you know whether or not these
2 transcripts are sent to people outside of the
3 industry?

4 A. Do I know specifically? I don't recall
5 specifically, no.

6 Q. Was there a practice at the Institute to
7 send to certain types of people, such as decision
8 makers, copies of documents such as those described
9 as Bowling-24 and Bowling-30?

10 MR. VASSALOTTI: Object to the form.

11 A. One of the practices certainly was to try to
12 keep people accurately informed on the nature of
13 controversy, yes.

14 Q. We discussed briefly yesterday --

15 A. Are you through with this?

16 Q. Yes, I am.

17 A. I found that very interesting.

18 Q. I'm glad. We discussed briefly yesterday
19 the AMA-ERF study performed in conjunction with the
20 funding from the tobacco industry, and do you recall
21 we discussed that joint meeting of members of the
22 AMA-ERF and the tobacco industry and the Council for
23 Tobacco Research and the American Medical
24 Association? Do you remember that?

25 A. I remember yesterday that you showed me a

1 document which listed some of those people or
2 representatives of attendance at a meeting. I don't
3 remember when that was.

4 Q. I showed you a document which came from
5 the Philip Morris files, I believe it was Mr.
6 Cullman. I'm not positive, meeting of the Committee
7 for Research on Tobacco and Health, January 30, 1968.
8 It was marked as Exhibit 23, correct?

9 A. You showed me it, I think that's the document
10 you showed me yesterday.

11 Q. And you indicated that the handwriting on
12 the top of the document was that of Mr. Cullman's
13 secretary?

14 A. It appears to me to be.

15 Q. Do you know who Dr. Blasingame, F.J.L.
16 Blasingame, M.D. is?

17 A. I've heard the name.

18 Q. In what context, sir?

19 A. I don't know.

20 Q. I'll show you what we've marked as
21 Bowling-23 for identification and direct your
22 attention to the second page where it lists those
23 people in attendance at the joint meeting that we
24 just discussed for the American Medical Association
25 and it has F.J.L. Blasingame, M.D., executive

1 vice-president. See if that refreshes your
2 recollection as to who he was and what his position
3 was.

4 A. Well, on this document you have just given me
5 it lists a Dr. Blasingame with the American Medical
6 Association group, so I assume that he is or was
7 associated with the American Medical Association.

8 Q. Was he a friend of tobacco?

9 A. Not to my knowledge.

10 MR. EDELL: Can you mark this for
11 identification.

12 (Exhibit~~s~~ Bowling-31, 32 and 33 marked
13 for identification)

14 Q. Mr. Bowling, I'm going to show you an
15 exhibit which we've marked as Bowling-31. It's a
16 letter from Carl Thompson of March 19, 1964. The
17 first addressee is yourself. And we have Mr. John
18 Blalock, Robert Heimann, Dan Provost, Charles Wade
19 and A. Judson Bass. Are those particular
20 individuals on any particular committee of the
21 Tobacco Institute?

22 A. Yes.

23 Q. What committee was that, sir?

24 A. Most if not all of them were on the Public
25 Relations Committee.

1 Q. And Carl Thompson in 1964 was working for
2 Hill and Knowlton, correct?

3 A. Yes.

4 Q. And Hill and Knowlton was doing work at
5 that time for the Tobacco Institute, correct?

6 A. Yes, I believe that's correct.

7 Q. Were they also doing work for, I think it
8 became CTR in '64. I'm not sure of the year. It
9 was either the TIRC or CTR at that point in time.
10 Were they doing work for that organization also at
11 that time, sir?

12 A. I'm not sure of those dates, Mr. Edell.

13 Q. The document has attached to it a letter
14 of February 28, 1964 written on the stationery of
15 the American Medical Association under the signature
16 of F.J.L. Blasingame, M.D., and it's addressed to
17 the Chief, Division of Trade Regulation Rules,
18 Bureau of Industry Guidance, Federal Trade
19 Commission, and see whether or not that refreshes
20 your recollection as to whether or not Dr.
21 Blasingame was a friend of tobacco. And I direct
22 your attention to the last paragraph where it says,
23 "With respect to cigarettes, cautionary labeling
24 cannot be anticipated to serve the public interest
25 with any particular degree of success. The health

1 hazards of excessive smoking have been well
2 publicized for more than ten years and are common
3 knowledge." See if that refreshes your recollection
4 as to whether or not Dr. Blasingame was a friend of
5 tobacco.

6 MR. NORTHRIP: I object to the form of
7 the question.

8 MR. VASSALOTTI: Object to the form.

9 MR. NORTHRIP: For the reason that I
10 don't know what the concept "a friend of tobacco"
11 means.

12 Q. Was he inclined to favor the tobacco
13 industry's position?

14 MR. VASSALOTTI: Same objection.

15 MR. NORTHRIP: Yes.

16 A. Thank you.

17 Q. You're welcome.

18 A. Now, would you repeat your question. Was Dr.
19 Blasingame a friend?

20 Q. A friend of the tobacco industry.

21 MR. VASSALOTTI: Same objection.

22 MR. DONATI: Are we going back to the
23 question about friend?

24 Q. Let's go back to the original question
25 and then everybody can object to the form. Was Dr.

1 Blasingame a friend of tobacco, sir?

2 MR. NORTHRIP: Objection to form.

3 A. Not to my knowledge.

4 Q. Was he a friend of any of the tobacco
5 companies?

6 MR. NORTHRIP: Same objection.

7 A. Not that I'm aware of.

8 Q. And the document you just reviewed,
9 Bowling-31 for identification doesn't -- strike that.
10 Was Dr. Blasingame favorably inclined to
11 the industry's position concerning placing a health
12 warning on packages of cigarettes?

13 MR. DONATI: Object to the form.

14 A. Was Dr. Blasingame what?

15 Q. Favorably inclined to the tobacco
16 industry's position regarding the placing of warning
17 labels on packages of cigarettes?

18 MR. VASSALOTTI: I'll repeat the
19 objection.

20 A. Which part of what you've just done pertains?

21 Q. The last question. I was just greeting
22 Mr. Shapiro.

23 (Pending question read by the reporter)

24 A. Mr. Edell, in the letter that you have just
25 given me in 1964 that was submitted by Dr.

1 Blasingame to the Federal Trade Commission, he
2 expresses a view. Some parts of that view, which
3 apparently is uniquely that of his organization,
4 were in accordance with the views that I recall at
5 that time. It doesn't necessarily mean that he was
6 a friend, just that he happens to hold the view that
7 was held by numbers of other people.

8 Q. Do you recall receiving that document,
9 sir?

10 A. Vaguely.

11 Q. Does your handwriting appear on that
12 document?

13 A. Yes.

14 Q. Would that suggest to you that you in
15 fact received it?

16 A. Oh, obviously. Some more than 20 years ago
17 this was one of the documents that came across my
18 desk, yes.

19 Q. And that document was circulated to a
20 number of individuals, correct, other than yourself?

21 A. I see it was sent to the six people whose names
22 you've read. It was a matter of public record
23 having been sent to the Federal Trade Commission.

24 Q. I thought it's been marked confidential
25 on that document?

1 A. Not by me.

2 Q. By your lawyers. You want to turn to the
3 second page. It was made public. I assume that it
4 would not have been marked confidential. You know
5 of no reason why that should have been marked
6 confidential?

7 A. It's a matter of public record, Mr. Edell. I
8 have no idea who marked it confidential.

9 MR. NORTHRIP: We'll remove the
10 confidence. Hadn't realized it was public.

11 MR. EDELL: Thank you.

12 Q. Other than the people who are shown as
13 having received carbon copies, was the document
14 Bowling, I'm sorry, what is that, sir?

15 A. Says 31.

16 Q. 31. Circulated to anybody else?

17 A. Yes.

18 Q. To whom?

19 A. Well, according to the marks here in my
20 handwriting I sent it to Mr. Cullman and to Mr.
21 Roper.

22 Q. Who is Mr. Roper?

23 A. Mr. Roper is no longer living. At that time he
24 was, I believe, a vice-president. Might have been
25 an executive vice-president but he was an officer of

1 Philip Morris.

2 Q. What position did he hold?

3 A. 1964. I could look that up to be absolutely
4 sure, but among his duties was manufacturing.

5 Q. I'm going to show you a document, sir,
6 which has been marked as Bowling-32 for
7 identification. It's a letter from H.H. Ramm. Do
8 you remember who he is?

9 A. H.H.?

10 Q. Yes. I think it's Henry Ramm.

11 A. Henry Ramm, I knew Henry Ramm, yes.

12 Q. He was vice-president and general counsel
13 to R.J. Reynolds?

14 A. Yes.

15 Q. Did you ever meet with Mr. Ramm?

16 A. Yes.

17 Q. On a number of occasions?

18 A. Oh, yes. Over the years I attended a great
19 number of meetings where Mr. Ramm was present.

20 Q. And the letter is addressed to Addison
21 Yeaman. Who is that?

22 A. Addison Yeaman was the counsel of Brown &
23 Williamson Tobacco Company in Louisville, Kentucky.

24 Q. Did you know him?

25 A. Yes.

1 Q. Did you meet him on a number of occasions?

2 A. Yes.

3 Q. Over the years?

4 A. Over a great number of years.

5 Q. I'm going to show you this letter which
6 we've marked as June 16, 1970. I'm going to direct
7 your attention to the second page where Mr. Ramm --
8 before we go into it, did Mr. Ramm have any
9 responsibility for CTR that you're aware of? Any
10 responsibility at CTR or for CTR? Did he do any
11 work for CTR?

12 A. When?

13 Q. At any point in time.

14 A. Yes.

15 Q. What was his responsibilities at CTR?

16 A. I'm not sure I know all of his responsibilities.
17 After his retirement at the Reynolds Tobacco Company
18 he did work for the Council for Tobacco Research.

19 Q. What kind of work?

20 A. I don't know.

21 Q. Did he hold a position there?

22 A. I assume so. I don't remember specifically
23 what.

24 Q. Do you recall --

25 A. Some important role thereafter, requirement job.

1 Q. I'm sorry, I didn't mean to interrupt you.

2 A. That's all right.

3 Q. Do you recall that part of his
4 responsibilities back in 1970 was to interview
5 possible candidates as scientific director of CTR?

6 A. In 1970. I don't specifically recall that.

7 Q. Do you ever recall that being part of his
8 responsibility at any time?

9 A. No.

10 Q. I'm going to show you this document and
11 see if it refreshes your recollection with respect
12 to Mr. Ramm's responsibilities concerning CTR and
13 interviewing of scientific directors. And I'm also
14 going to direct your attention to the second page,
15 last paragraph and see if that refreshes your
16 recollection with respect to Dr. Blasingame where it
17 says, "Incidentally, when I was in Chicago last week
18 I called on our old friend Dr. Blasingame to see if
19 he could furnish any leads. He is now in the
20 medical consulting business and if he turns up
21 anyone for us this will involve some expense."

22 While you're reading it, sir, let me also
23 make the representation that your counsel have
24 indicated that that document came from your file.

25 A. This document I'm now reading?

1 Q. Yes, sir.

2 A. Did you have a question about this?

3 Q. Yes, I did.

4 A. Your question to me is does it refresh my
5 memory?

6 Q. One, as to whether or not Mr. Ramm's
7 responsibilities in June of 1970 included
8 interviewing people who were prospective candidates
9 for the director position of the CTR.

10 A. Yes. Reading this letter, it makes it apparent
11 that he was much interested, he says finding,
12 interviewing possible -- purpose was to interview a
13 possible candidate for Scientific Director of CTR.

14 Q. And the other question, sir, was --

15 A. Then he goes on, he talks about how to find the
16 best possible qualified personality. Talks about
17 other approaches including Spencer Stuart and
18 Associates and it says he doesn't want to leave any
19 stone unturned. Says it's going to involve some
20 expense and he refers to this Dr. Blasingame.

21 Q. As an old friend, right? Our old friend,
22 referring to either just Mr. Addison and Mr. Ramm or
23 referring to the tobacco industry, correct?

24 MR. SHAPIRO: I object --

25 MR. DONATI: Object.

1 Q. Personal crusade, I'm sorry. Let's
2 assume, sir, that it was not, as you interpret it, a
3 personal crusade, but rather an official
4 communication of the AMA. Would you then believe it
5 to have been an appropriate thing for the AMA to
6 have done?

7 MR. NORTHRIP: Just a moment, Mr. Bowling.

8 (Discussion held off the record)

9 MR. VASSALOTTI: We object to the
10 question and instruct the witness not to answer on
11 the grounds that it is entirely hypothetical and is
12 asking the witness to formulate a position based
13 upon a hypothetical situation.

14 MR. EDELL: Just so the record is clear,
15 Mr. Vassalotti, I think that if you review the
16 letter it is written on the stationery of the
17 American Medical Association and it lists president,
18 Robert B. Hunter, M.D., has his signature, and I
19 think that the presumption under the law in New
20 Jersey is that what Dr. Hunter said was said on
21 behalf of the AMA and was not part of a personal
22 crusade on his behalf. The witness has made an
23 assumption contrary to what the law is in New Jersey,
24 an assumption that was convenient for him in
25 responding to the question. And now for you to

1 MR. VASSALOTTI: Object to the form.

2 MR. SHAPIRO: -- to the form of the
3 question and the testimony, more possibilities than
4 you ever intend to acknowledge.

5 A. I have no idea what Mr. Ramm could have had in
6 mind, any reference to that gentleman or anybody
7 else 15 years ago.

8 Q. And that doesn't jog your memory as to
9 whether or not Dr. Blasingame was a friend --

10 A. Not at all of.

11 Q. Of the tobacco industry; is that correct?

12 MR. VASSALOTTI: Objection to the form.

13 A. That is correct, it does not. Would you like
14 this back?

15 Q. I would.

16 A. Would you like this one?

17 Q. I would like that back, also.

18 I think there's also a reference to, I
19 think it's Dr. Bing. Says Bing called me today and
20 said that he had a man in mind and that he would
21 shortly send me papers about him to see whether I am
22 interested. Do you know of any other Bing who would
23 have participated in the selection of a scientific
24 director other than Dr. Richard Bing?

25 A. No.

1 Q. And that's the same Dr. Richard Bing that
2 was on the Scientific Advisory Board of the CTR,
3 correct?

4 A. I have no idea.

5 Q. We know that he was on the AMA-ERF
6 committee, correct? Do you remember that from
7 yesterday?

8 MR. VASSALOTTI: That who was on the AMA?

9 MR. EDELL: Dr. Bing.

10 MR. VASSALOTTI: Which Dr. Bing?

11 MR. EDELL: Richard J. Bing.

12 A. You showed me a list in that big red book.

13 Q. Entitled, "Tobacco and Health Research
14 Studies, Relationship of Tobacco and Health,"
15 published by the AMA-ERF Committee on Research of
16 Tobacco and Health?

17 A. Yes. You showed me that book which I believe
18 listed Dr. Bing as one of the scientific people.

19 Q. I'm going to show you one of the first
20 documents that we marked for identification in this
21 deposition, Bowling-2 for identification. It's a
22 confidential report, Scientific Advisory Board
23 meeting of the Tobacco Industry Research Committee.
24 It lists in attendance a number of individuals. And
25 see if that refreshes your recollection as to

1 whether or not Dr. Richard J. Bing was also a member
2 of the Scientific Advisory Board.

3 MR. NORTHRIP: I object to the form of
4 the question. I don't believe Mr. Bowling has ever
5 testified otherwise.

6 MR. EDELL: He said he didn't recall,
7 just before.

8 MR. VASSALOTTI: I thought he said he
9 didn't know whether that was the same Dr. Bing
10 referred to in the letter. That's why I made the
11 objection. I thought it might be unclear.

12 Q. I thought you said you didn't know
13 whether or not Dr. Bing was associated with the
14 Scientific Advisory Board. Am I incorrect, sir?

15 A. I said I didn't know Dr. Bing.

16 Q. Oh, okay. You knew of him, though,
17 correct?

18 A. I've heard that name, yes.

19 Q. But you didn't know he was on the
20 Scientific Advisory Board of the TIRC, correct?

21 A. I was not aware of members necessarily of the
22 Scientific Advisory Board.

23 Q. Let's look at the minutes of 1964 --

24 A. Excuse me. But I think you have a pending
25 question. Don't you have a question on this

1 document?

2 Q. I do and I was going to give you another
3 document, Bowling-3D for identification, which are
4 the minutes of the Scientific Advisory Board of the
5 TIRC for March of '64. Just so you have the time
6 frame. Does that refresh your recollection as to
7 whether or not Dr. Bing, Richard J. Bing, was on the
8 Scientific Advisory Board of the TIRC?

9 A. No, it doesn't. What you handed me doesn't say
10 that he was. I have no reason to doubt he was if
11 you say that he was, but to answer your question,
12 he's listed as having attended a meeting but does it
13 along with a great number of other people.

14 Q. Along with the other people that
15 identifies their position, doesn't it, sir? And
16 under attendance in the first block after the first
17 individual listed it says chairman, right?

18 A. Well, it lists a lot of people, some of whom
19 are identified.

20 Q. The others are not identified because
21 they are in fact members of the Scientific Advisory
22 Board; isn't that right, Mr. Bowling?

23 A. I don't know that. If you say that I have no
24 reason to doubt it.

25 Q. And that's the same Dr. Richard Bing that

1 received, I think it's over \$116,000 from 1959 to
2 1969 from the TIRC; is that correct?

3 A. I have no remote way of knowing that.

4 Q. Well, you want to look at these minutes.

5 MR. VASSALOTTI: I think he's already
6 testified that he didn't know how much any of these
7 people got.

8 MR. SHAPIRO: I object.

9 MR. VASSALOTTI: Now you're bootstrapping
10 the testimony.

11 MR. EDELL: I'm not bootstrapping
12 anything.

13 MR. NORTHRIP: These questions were asked
14 and answered yesterday.

15 MR. SHAPIRO: Save summations for trial.
16 I don't think they're appropriate at depositions.
17 All of this has been gone through before and you're
18 just kind of browbeating someone who's told you that
19 he doesn't know who was on or whether Dr. Bing was
20 on the Scientific Advisory Board. I think having
21 been told that once you ought to go on to something
22 productive so we can conclude today.

23 MR. EDELL: All right. We have a
24 differing prospective of what is or is not
25 productive.

1 Q. Who is Dr. Hunter, Robert Hunter?

2 A. I don't know.

3 Q. Who is Dr. Hoyt Gardner?

4 A. Dr. Hoyt Gardner is a surgeon in Louisville,
5 Kentucky.

6 Q. Wasn't he president of the AMA?

7 A. Yes, at one time he was.

8 Q. Did you ever ask Dr. Hunter for his help
9 concerning certain activity by executives of the AMA?

10 A. Did I ever ask Dr. Hunter for his help?

11 Q. Yes.

12 A. His help at what, Mr. Edell?

13 Q. At trying to do something to help the
14 tobacco industry to persuade Dr. Hunter or other
15 members of the AMA from taking a position other than
16 the position that they were taking concerning, let's
17 say advertising, for instance.

18 MR. NORTHRIP: I object to the form of
19 the question. Would you read it back. I believe
20 it's gotten garbled.

21 (Record read by the reporter)

22 Q. I'm sorry. Did you ever ask Dr. Hunter
23 to try to help you in dissuading members of the AMA
24 from taking any particular position with respect to
25 advertising and cigarettes?

1 A. I don't recall but if you would show me that
2 document perhaps it might be helpful.

3 Q. Is that a practice that you would have
4 engaged in, sir?

5 MR. DONATI: Objection to the form.

6 A. Was it a practice to ask Dr. Hunter for help?
7 I don't know. I don't remember Dr. Hunter.

8 Q. Do you remember Dr. Gardner?

9 A. Oh, yes, very well.

10 Q. Did you ever ask Dr. Gardner for his help
11 to try to dissuade the AMA from taking a position on
12 the issue of advertising of cigarettes?

13 A. Not to my knowledge.

14 Q. Was that a practice that you would have
15 participated in?

16 A. To ask?

17 MR. DONATI: Object to the form.

18 MR. VASSALOTTI: Object to the form.

19 MR. SHAPIRO: Object to the form.

20 A. Mr. Edell, your questions aren't very clear to
21 me. What is it you're asking me?

22 Q. Did you ever seek Dr. Gardner's help in
23 attempting to influence the AMA with respect to any
24 particular position that the AMA took?

25 A. Did I ever ask Dr. Gardner?

1 Q. Yes.

2 A. For help?

3 Q. Yes.

4 A. In influencing the position of the AMA?

5 Q. Yes.

6 A. I don't specifically recall. It's entirely
7 possible but I don't remember any.

8 Q. How long did you know Dr. Gardner?

9 A. 40 years.

10 Q. What was your relationship?

11 A. A friend. We went to college together.

12 Q. Did you correspond with him over the
13 years?

14 A. Oh, we're friends, families are friends.

15 Q. That wasn't the question. Did you
16 correspond with him over the years?

17 A. With Hoyt Gardner, sure. As I do with great
18 numbers of friends.

19 Q. You correspond with him regarding
20 cigarette smoking and health?

21 A. Perhaps.

22 Q. Did you ever work with him on any
23 particular issue dealing with smoking and health?

24 A. I don't remember specifically, although he
25 would have asked me over the years for information

1 information or help or kept me advised, perhaps with
2 what he was doing, what his children might be doing.

3 Q. Regarding smoking and health?

4 A. Children on smoking and health, no. Just we
5 were personal friends.

6 Q. Now, we're not talking about philosophy,
7 about atom bombs or children or anything else. All
8 I want to know is about cigarettes and health, sir.
9 Did you ever have any dealings with Dr. Gardner
10 regarding cigarettes and health? Period.

11 A. I don't recall any specifically, no.

12 Q. Do you recall ever meeting with him at
13 all to discuss that? Not a particular meeting.

14 A. Well, it's entirely possible over the years. I
15 have a great respect for him and I would have
16 enlisted his opinion as a friend and doctor. He
17 once took my appendix out.

18 Q. Did he ever discuss with you what his
19 opinion was concerning cigarette smoking and health?

20 A. Oh, yes.

21 Q. What did he tell you?

22 A. Oh, I can't remember all the scientific
23 terminology or his observations.

24 Q. What about the bottom line, sir? Did he
25 think that cigarette smoking was harmful to people?

1 A. I don't remember it any specific point in time
2 but I do recall that he believed that the research
3 was not adequate and that a great deal more research
4 needed to be done for the good of mankind and
5 humanity.

6 Q. Who is Charles Whittingham?

7 A. I don't know.

8 Q. Chuck Whittingham?

9 A. Oh, Chuck, yes. I do know Chuck Whittingham.

10 Q. Who is Chuck Whittingham?

11 A. Chuck Whittingham was with Time, Inc. and has
12 been in a variety of positions there over the years.
13 Very nice guy.

14 Q. Was he employed by anybody?

15 A. I said he was employed by Time, Inc.

16 Q. Do you have a personal relationship with
17 him?

18 A. Yes, I do.

19 Q. What was that, sir? Personal friends?

20 A. Chuck -- Yes. Chuck and his wife and I are all
21 friends. We got him to do some work for the Tennis
22 Hall of Fame.

23 Q. Did Philip Morris have anything to do
24 with that?

25 A. Anything to do with what?

1 Q. Tennis Hall of Fame.

2 A. People associated with Philip Morris had been
3 active in supporting the Tennis Hall of Fame, yes.
4 Joe Cullman is, in fact, I believe is the president
5 of the Tennis Hall of Fame.

6 Q. Philip Morris has been active in
7 sponsoring tennis tournaments?

8 A. Oh, yes.

9 Q. Over a number of years, correct?

10 A. Over a great number of years. Many decades.

11 MR. NORTHRIP: I assume, Mr. Edell, these
12 questions have some relevance?

13 MR. EDELL: Yes, they have some relevance.

14 Q. Did you ever discuss with Chuck
15 Whittingham the issue of cigarette smoking and
16 health?

17 A. I don't recall whether or not I did. It's
18 entirely possible.

19 Q. Did you ever discuss with him the mutual
20 interest of the tobacco industry and the publishing
21 industry insofar as legislation was concerned
22 dealing with advertising?

23 A. Yes.

24 MR. EDELL: Would you please mark these
25 two for identification.

1 (Exhibits Bowling-34 and Bowling-35
2 marked for identification)

3 Q. Do you recall Mr. Whittingham sending you
4 letters addressed to the editor of Life Magazine by
5 the President of the American Medical Association?

6 A. No.

7 Q. Wherein the president of the American
8 Medical Association requested that publishers
9 eliminate cigarette advertising from their
10 publication? You don't recall that?

11 A. No.

12 Q. I'm going to show you a document which
13 has been marked as Bowling-34. It's a letter to you
14 from Charles A. Whittingham of May 21, 1981. By the
15 way, I can tell you that this did not come from your
16 file. We were never furnished with a copy of this
17 by your attorneys. And see if it refreshes your
18 recollection as to whether or not Mr. Whittingham
19 ever sent you such a letter.

20 I believe that letter for your
21 edification came from the Tobacco Institute.

22 A. Did you have a question about this, Mr. Edell?

23 Q. I certainly did, sir.

24 A. What is that question?

25 MR. EDELL: Would you please repeat it.

1 (Pending question read by the reporter)

2 A. The question is does that refresh my
3 recollection as to whether or not he sent this
4 letter you've just shown me?

5 Q. He sent a letter such as that which I
6 have described to you generally?

7 A. Well, you have shown me a letter in which he
8 addresses to me and which he says, "Here is the
9 letter I mentioned to you today. Our standard
10 answer is essentially that we support the right of
11 manufacturers of lawful products to present their
12 selling messages to the public. However, we do
13 reserve the right to ensure that all advertising
14 submitted to us conforms with our standards of
15 publishing."

16 Then he goes on to say he looks forward
17 to working with me on the Tennis Hall of Fame. Yeah,
18 you've shown me the letter.

19 Q. Letter from Dr. Hunter?

20 A. He attaches a letter from a Dr. Robert B.
21 Hunter.

22 Q. President of the American Medical
23 Association, correct?

24 A. That's what the letterhead says.

25 Q. Did you do anything in response to that

1 letter, sir?

2 A. I don't recall.

3 Q. Is it your practice to respond to letters
4 such as that?

5 MR. VASSALOTTI: Object to form.

6 MR. EDELL: What's wrong with the form?

7 MR. VASSALOTTI: I have no idea what you
8 mean by was it his practice to respond to letters
9 like that. Like what?

10 MR. EDELL: Like the one he's looking at.
11 Like the letter that's been marked for
12 identification.

13 MR. VASSALOTTI: You've asked him if he
14 responded to that.

15 MR. EDELL: Thank you for your
16 clarification.

17 A. If your question to me is would it be my
18 practice to react to a letter such as the one you
19 have shown me wherein this Dr. Hunter is trying to
20 get someone to refuse tobacco product advertising,
21 then the answer is yes, it would be my practice to
22 respond and be intensely interested.

23 Q. Respond to Dr. Hunter? Or try to attack
24 it from a collateral source?

25 MR. DONATI: Object to the form.

1 Q. Or both?

2 MR. DONATI: Are those the only choices?

3 MR. EDELL: In my question they are.

4 MR. DONATI: That's why I objected.

5 A. I would object on the same basis as Mr.
6 Whittingham.

7 Q. Who would you have objected to, sir?

8 A. You mean in this particular instance? I don't
9 know.

10 Q. Would you have called your friend Dr.
11 Hoyt Gardner and say, dear Hoyt, look at this, what
12 we have. You used to be such a -- you used to
13 handle the presidency of the AMA in such a
14 statesman-like manner, I wonder whether there's
15 anything we can do about this. Would you have done
16 something like that?

17 MR. SHAPIRO: He certainly wouldn't ask
18 an improper question like that I'm sure.

19 MR. VASSALOTTI: Object to the question.

20 MR. EDELL: That's okay. To the form I
21 assume?

22 MR. VASSALOTTI: Everything about it.

23 MR. EDELL: Are you going to direct him
24 not to answer?

25 MR. VASSALOTTI: No.

1 MR. EDELL: Okay.

2 A. Do you have a question?

3 Q. I do.

4 A. What is your question?

5 Q. I stated it already. Would you like it
6 repeated?

7 A. Well, it is sometimes confusing when you get
8 involved in a lot of back play as to what the nature
9 of your question is if you'd like to state that.

10 Q. One of the things I said to you during
11 the first day, sir, is that you'd probably be best
12 off ignoring the colloquy of counsel because it does
13 tend to confuse the witnesses in terms of the
14 question. It really is a legal question that we are
15 discussing and it really shouldn't concern yourself.
16 But you can repeat the question for the witness.

17 (Pending question read by the reporter)

18 A. Well, now, Dr. Gardner is deeply interested in
19 the American Medical Association and it is entirely
20 possible that I would call something like this to
21 his attention. He believes in the laws and in
22 freedom and in honesty and openness. I might well
23 have, sure. I think that would be a proper thing to
24 do.

25 Q. Where is he located, sir?

1 A. Where is Dr. Gardner located?

2 Q. Yes.

3 A. Dr. Gardner is in Louisville, Kentucky.

4 Q. Has he been there his whole life?

5 A. So far. He has lived in Missouri at various
6 points and he did his residency in Michigan but
7 other than that.

8 Q. Do you recall sending this letter,
9 Bowling-35, to Dr. Gardner? It's dated May 26th,
10 1981. It's another document that you authored that
11 we didn't get from your files, came from the Tobacco
12 Institute files.

13 A. Your question is do I remember writing this
14 letter?

15 Q. Yes, sir.

16 A. Yes, I remember writing this letter.

17 Q. Do you remember what, if anything, Dr.
18 Gardner did?

19 A. No, I do not. This letter is not exactly as
20 you characterize it. This letter asks if he knew
21 about these letters such as Dr. Hunter's, suggesting
22 that people refused to accept advertising of tobacco
23 products and note that it must be distressing to him,
24 Dr. Gardner, to see such a misuse of the office.
25 And then go onto tell him about a number of studies

1 that refute the basic premise.

2 Q. Why is it a misuse of the office, sir?

3 Of the American Medical Association? Sir?

4 A. Well, it seems someone's personal crusade might
5 have been carried on here that had nothing to do
6 with research or trying to find answers to
7 perplexing scientific questions.

8 Q. And that's why it's a misuse of the
9 office? Is that your testimony, sir?

10 MR. SHAPIRO: You asked the question, he
11 gave you an answer.

12 Q. Mr. Bowling?

13 A. I've noted here that letters such as this one
14 don't help in the search for logic, focused on what
15 I think to be a very complex perplexing scientific
16 question.

17 Q. The question was why is it a misuse of
18 the office?

19 MR. NORTHRIP: I believe it's been
20 answered.

21 MR. EDELL: I don't think it has been,
22 Mr. Northrip.

23 MR. DONATI: Should we take a vote?

24 A. It looks as if the office is being used for a
25 personal crusade in an area that's been very well

1 defined, as Mr. Whittingham notes in his statement
2 wherein he says that they support, Time supports the
3 right of manufacturers of lawful products to present
4 their selling messages to the public.

5 Q. Well, does the AMA have an official
6 position, did it have an official position in 1980
7 concerning cigarette smoking and health?

8 A. Did the AMA have an official position in 1980,
9 did you say?

10 Q. Yes.

11 A. Well, I don't know. I would hope they had a
12 position wanting research to be done.

13 Q. You don't recall whether or not the AMA
14 had a position that cigarette smoking was harmful to
15 human beings? You don't remember that?

16 A. I don't remember a position having to do with
17 brand advertising.

18 Q. That wasn't my question, sir. You want
19 the question read back? Didn't have anything to do
20 with brand advertising. The question was --

21 A. This does, this document you've shown me
22 relates --

23 Q. I understand that.

24 A. On whether or not people have the right to
25 advertise lawful products.

1 Q. I understand what it says. My question
2 to you was unrelated to that document. It's a very
3 simple question.

4 A. What is your question?

5 Q. In 1980 was the AMA's position regarding
6 cigarette smoking and health that cigarettes caused
7 disease in human beings?

8 A. I don't know precisely what their position is
9 but they were discouraging smoking certainly over a
10 period of many decades.

11 Q. Well, the president of AMA speaks for the
12 organization, doesn't he?

13 A. Should.

14 Q. The president of the Tobacco Institute
15 speaks for the Tobacco Institute, right?

16 A. Should.

17 Q. Did the Tobacco Institute hold meetings
18 at which editors and publishers and newswriters
19 attended?

20 A. You mean press conferences or briefings?

21 Q. Briefings.

22 A. On occasion.

23 Q. Did the Tobacco Institute tell members of
24 the press and editors and publishers what they
25 thought should be done with respect to advertising

1 concerning cigarettes?

2 A. Did who do what?

3 Q. Did the Tobacco Institute.

4 A. Tell?

5 Q. Editors, publishers of magazines,
6 newspapers, what position they thought was
7 appropriate regarding cigarette smoking and
8 advertising?

9 A. Well now, Mr. Edell, advertising would be of
10 interest to publishers, probably, not to editors.

11 Q. Well, let's restrict it to publishers
12 then, sir. Did the Tobacco Institute ever convey to
13 publishers of magazines its position regarding
14 advertising of cigarettes?

15 A. Yes.

16 Q. Was that not a misuse of the Tobacco
17 Institute's office?

18 MR. NORTHRIP: Object to the form of the
19 question.

20 A. No.

21 Q. Why was it a misuse of the AMA to let
22 publishers know its view concerning advertising of
23 cigarettes?

24 MR. NORTHRIP: I believe that question
25 has been asked and answered now two times. You can

1 answer one more time and then I'm going to instruct
2 him not to answer anymore.

3 MR. EDELL: Thank you.

4 MR. SHAPIRO: Must be the Christmas
5 season that Mr. Northrip is being so generous.

6 A. Mr. Edell, your question is why is the Tobacco
7 Institute interested in the right of its members to
8 advertise? Is that your question?

9 Q. No. What I am asking you, sir, why in
10 your opinion is it appropriate for the Tobacco
11 Institute to contact publishers and let them know
12 what their position is concerning the advertising of
13 cigarettes and why it's inappropriate for the
14 American Medical Association to contact publishers
15 of magazines and newspapers and advise them of its
16 position regarding the advertising of cigarettes?

17 MR. NORTHRIP: I'm going to object to the
18 form of that question. It further misstates the
19 facts and the situation in that it assumes that the
20 position stated in Dr. Hunter's letter is the
21 position of AMA. I believe Mr. Bowling testified
22 that he was not aware or did not believe that they
23 had taken any position on brand advertising. So the
24 examples are simply not comparable.

25 MR. EDELL: Well, you're assuming that it

1 isn't the position and I am assuming for the
2 purposes of this deposition that a letter written on
3 the letterhead of the AMA from the president of AMA
4 under the law, at least in New Jersey, is probably
5 an authorized statement on behalf of the AMA.

6 MR. NORTHRIP: Well, you can ask Mr.
7 Bowling if he believes it is.

8 MR. EDELL: I asked him a question, Mr.
9 Northrip. If you want to direct him not to answer,
10 that's your prerogative.

11 MR. NORTHRIP: He can try to answer it.
12 A. If the Tobacco Institute were to speak on that
13 subject, it would not be a personal crusade. The
14 letter that you have shown would appear to be a
15 personal crusade, appear to me to be at that time.

16 Q. If it wasn't a personal crusade but
17 rather an authorized statement on behalf of the AMA
18 would your opinion change, sir?

19 A. You're asking an assumption.

20 Q. Well, you assumed that it was not an
21 authorized statement on behalf of the AMA but rather
22 that it was a personal attack?

23 A. I think I said, I did not use that word. It
24 appeared to me in reading as if Dr. Hunter's letter
25 was in the nature of a personal crusade.

1 direct him not to answer the question by saying that
2 this communication from Dr. Hunter was
3 hypothetically a communication in his official
4 position with the AMA is totally inappropriate.

5 MR. NORTHRIP: Mr. Bowling is not an
6 attorney. He has given you his interpretation of
7 that letter and he has told you the reasons why he
8 made the response that he did and why he considered
9 it a misuse of the office. His letter was not
10 received in or written from New Jersey. I'm not
11 sure why New Jersey law applies to that particular
12 correspondence. And I would stand by the direction
13 Mr. Vassalotti has made.

14 Q. Sir, did you know that Dr. Richard Bing
15 was associated with the University of Washington
16 School of Medicine in St. Louis, Missouri?

17 A. No.

18 Q. I'm going to show you a document which
19 we'll mark as Bowling 36.

20 (Exhibit Bowling-36 marked for
21 identification)

22 Q. I'm going to show you a document which
23 has been marked as Bowling-36 for identification.
24 It is captioned, "Following is a list of scientists
25 who received new or continuing grants from the

1 Tobacco Industry Research Committee in 1956 and the
2 title of their projects." It came from your files.
3 On the first page it lists as the No. 4 recipient
4 Richard J. Bing, M.D., Professor of Medicine,
5 Washington University School of Medicine, St. Louis.
6 See if that refreshes your recollection.

7 A. Mr. Edell, this document, following is a list
8 of scientists who received new or continuing grants
9 from the Tobacco Research committee in 1956 and the
10 title of their projects --

11 Q. Came from your files, sir, for your
12 edification.

13 A. Thank you. It's a list of dozens of
14 researchers.

15 Q. I know what it is.

16 A. And scientific studies and their organization.
17 And your question is does it refresh my mind on what?

18 Q. All I did is refer you to the fourth
19 listing, sir. Dr. Bing. I know there are a great
20 number of people that are listed there.

21 A. Yes.

22 Q. Does it refresh your recollection with
23 respect to Dr. Bing's association with Washington
24 University in St. Louis, Missouri?

25 A. No. There are dozens and dozens of doctors and

1 associations on this list.

2 Q. I know that.

3 A. Of which, according to this document, he's one.

4 Q. That's correct. Were you aware that
5 Washington University received at least as of 1977
6 2.8 million dollars from the tobacco industry in
7 research programs?

8 A. I was not aware of the precise dollar amount.
9 I know that there's a very major project at
10 Washington University, St. Louis that has been
11 funded by the tobacco industry, members of it.

12 Q. Were you aware that it was funded in the
13 millions of dollars as opposed to, let's say just
14 100 or \$200,000?

15 A. I was not aware of the precise amount. I knew
16 it was a great deal of money, very expensive, major
17 project.

18 Q. Document marked as HRK-73, the deposition
19 of Mr. Kornegay. It's a letter of March 14, 1977
20 from Leonard Zahn to Horace Kornegay to which Mr.
21 Zahn attaches a summary of industry-supported work
22 and see if that refreshes your recollection. You
23 only have to read the first two pages. Of course if
24 you want to read the rest it's up to you, sir.

25 A. Thank you, Mr. Edell.

1 Q. You're welcome, Mr. Bowling.

2 It wasn't sufficient to refresh your
3 recollection to look at the first two pages?

4 A. Recollection as to what?

5 Q. With respect to how much independent
6 research funding the tobacco industry gave to
7 Washington University in St. Louis.

8 A. I would not have recalled the dollar amount.
9 It looks to be many, many, many millions of dollars
10 that Mr. Zahn reports here.

11 Q. I understand that. He has a listing
12 there just to Washington University?

13 A. No.

14 Q. He doesn't list Washington University?

15 A. Yes, it's listed along with numbers of other
16 very major projects.

17 Q. Doesn't he have a figure next to
18 Washington University, sir?

19 A. Oh, yes.

20 Q. What is that figure?

21 A. It says 2.8 million dollars.

22 Q. And that doesn't refresh your
23 recollection?

24 A. No. I mean, now that you've shown it to me, I
25 have no reason to doubt that that amount was spent

1 in research.

2 Q. Mr. Bowling, do you recall preparing a
3 statement regarding the AMA-ERF study?

4 A. Do I recall preparing a statement?

5 Q. A press release. Not for you. For
6 somebody else.

7 A. No.

8 Q. I'm going to show you a document which
9 was marked as HRK-91 at the deposition of Dr. Horace
10 R. Kornegay. It's a note, looks like a press
11 release that was DEX, D-e-x, to Horace R. Kornegay
12 Tobacco Institute from J.C. Bowling August 7, 1978.
13 See if that refreshes your recollection as to
14 whether or not you prepared such a statement. Just
15 for your edification, sir, that didn't come from
16 your file. We weren't furnished with a copy of that
17 from your file. That came from Tobacco Institute's
18 file.

19 A. Yes, you told me that.

20 Q. I didn't know that I had told you that.

21 A. Your question, Mr. Edell, is does this refresh
22 my memory as to whether I prepared this release?

23 Q. Yes, sir.

24 A. No, I would not have prepared the release.

25 Q. Why were you sending that to Mr. Kornegay,

1 then?

2 A. Well, it's apparent that this was returned to
3 Mr. Kornegay with certain editing, which is not mine.

4 Q. Does it have your initials on it?

5 A. Yes, it does. It says that I sent this to
6 Kornegay noting that somebody else had made a
7 suggestion, an editing suggestion.

8 Q. Who made that suggestion?

9 A. It says Tom A.

10 Q. Who is Tom A?

11 A. Tom A is an attorney, chief legal counsel,
12 Philip Morris.

13 Q. Did you review that, sir?

14 A. I obviously read it and sent it back to Mr.
15 Kornegay.

16 Q. Did you note any errors in what Mr.
17 Kornegay proposed to announce to the public
18 concerning the AMA study?

19 A. Did I note any errors in his press release?

20 Q. That's correct.

21 MR. SHAPIRO: Object to the form.

22 A. No, I don't note any errors in this. Nor did I
23 at that time. The fact that it appeared to be a
24 release, news release of a statement of Mr. Kornegay's
25 with certain word editing.

1 Q. But you agree to the substance of what
2 was said, with the substance of what was said by Mr.
3 Kornegay; is that correct?

4 A. I have no reason to doubt that Mr. Kornegay
5 would be telling the truth. Naturally I would
6 assume that.

7 Q. Are you finished looking at the document,
8 sir?

9 A. Yes, I'm through looking at that, thank you.

10 Q. Do you see the last paragraph where it
11 says, "Contrary to the impression given the various
12 press treatments of the AMA report, Mr. Kornegay
13 pointed out that the report in fact was not in any
14 way predicated on research which purported to find a
15 causal relationship between cigarette smoking and
16 various diseases in human beings"? Do you see that?

17 A. Of course I see that.

18 Q. You didn't find that to be in error at
19 that time, did you?

20 A. I'd have no reason to doubt Mr. Kornegay's
21 statement.

22 Q. Did the study find that there were potent
23 co-carcinogens found in tobacco tar; would that be
24 consistent with that statement, sir?

25 A. You're asking me a scientific question?

1 Q. Do you know what co-carcinogens are?

2 A. No.

3 Q. You don't know what a carcinogen is?

4 A. Well, I've certainly heard that term, sure.

5 Q. What's a carcinogen?

6 A. I can't give you a precise scientific
7 definition but it has to do with cancer producing, I
8 would assume.

9 Q. Is that consistent with that last
10 paragraph?

11 MR. DONATI: Is what consistent?

12 Q. The finding of the AMA that potent
13 co-carcinogens were found in tobacco tar.

14 MR. VASSALOTTI: Before Mr. Bowling
15 answers I think you ought to advise him or us
16 whether or not they made findings regarding
17 carcinogens in humans, carcinogens in animals, what
18 levels of exposure, and the question as framed is
19 very misleading.

20 MR. SHAPIRO: You might want to ask if
21 the term co-carcinogens has any particular
22 scientific meaning.

23 MR. EDELL: Are you going to direct him
24 not to answer?

25 MR. VASSALOTTI: Yes. I think it can be

1 framed in a not misleading fashion.

2 Q. Does the following statement -- is the
3 following statement consistent with the last
4 paragraph of Mr. Kornegay's press release that you
5 reviewed and found no error in, "The committee
6 believes that the bulk of research in this project
7 supports the contention that smoking plays an
8 important role in the production of chronic
9 constructive pulmonary disease"?

10 MR. NORTHRIP: Would you read that
11 question again, please.

12 (Pending question read by the reporter)

13 A. Mr. Edell, you're reading from a document that
14 I haven't seen. What was that term? Could you read
15 that back again. I was puzzled by that one, the
16 last portion of what you just read.

17 (Record read by the reporter)

18 A. Supports the contention. I don't know. I'm
19 not a scientist. If you'd like to have me read that
20 and consult with some scientist to explain it or
21 tell me what, I'd might be better able to make a
22 judgment, but I have no reason to believe that
23 anything that he said would not have been factual.

24 Q. Who is Charles L. Waite, W-a-i-t-e?

25 A. Is that Dr. Waite?

1 Q. That's Dr. Waite. Dr. Charles L. Waite.

2 A. Dr. Waite I believe is a doctor who worked for
3 the Tobacco Institute, employed by them at one point.

4 Q. Are you aware that he performed an
5 analysis of the AMA-ERF studies which were
6 memorialized in the document which we've talked
7 about before, tobacco and health?

8 A. No, but that would have been a very logical
9 function for a doctor employed by the Tobacco
10 Institute to perform, I would assume.

11 Q. You're aware, sir, that there were
12 numerous representations to the public concerning
13 the independent research funded through the AMA-ERF
14 by the Tobacco Institute, aren't you?

15 A. Am I aware of what?

16 Q. The numerous representations to the
17 public by the tobacco industry about the amounts of
18 money expended by it.

19 MR. NORTHRIP: Object to the form of the
20 question.

21 Q. Through the AMA-ERF study.

22 MR. NORTHRIP: Object to the form as it
23 refers to representations by the tobacco industry.

24 Q. Including people like Mr. Cullman before
25 a Congress.

1 A. Is your question am I aware that people in the
2 tobacco industry have said that the industry funded
3 research?

4 Q. Through the AMA-ERF.

5 A. I'm certainly aware that people in the tobacco
6 industry have noted that the industry has given a
7 great deal of money to independent research over
8 many decades.

9 Q. And that representations were made that
10 many millions of dollars were given to the AMA-ERF
11 committee to perform such research, correct?

12 A. Among others many millions were, in fact, given
13 to the AMA-ERF, among many others.

14 Q. Were you aware, sir, that only 50 percent
15 of the studies funded by the Tobacco Institute
16 through the AMA-ERF were relevant to smoking?

17 A. No.

18 Q. Wouldn't that have been something that
19 would have been important to communicate to the
20 public when you make these representations to the
21 public about how much money was being spent by the
22 tobacco industry on this independent research, to
23 discover whether or not cigarette smoking causes a
24 disease in human beings?

25 MR. DONATI: Object to the form of the

1 question. I think you've changed the scope of the
2 representation that was made.

3 Q. You may answer the question, sir.

4 A. Your question is am I aware?

5 MR. EDELL: Would you read the question
6 to the witness.

7 (Pending question read by the reporter)

8 A. Mr. Edell, you just told me that certain
9 portions of the research funds that were given to
10 the AMA-ERF to do research on smoking and health
11 were not directed to that area. So you have told me,
12 you asked me if I knew that. No, I didn't know that.

13 Q. Well, you're a communicator, sir. You
14 communicate facts to the public on behalf of Philip
15 Morris; is that correct?

16 A. Facts if I'm aware of them. You asked if I
17 knew that. I told you, no, I didn't know that.

18 Q. From a communicator's perspective, if
19 you're going to tell the public that Philip Morris
20 at the Tobacco Institute, tobacco industry is
21 spending, let's say ten million dollars through the
22 AMA-ERF program, don't you also think that the
23 public would be entitled to know that only 50
24 percent of the work which was included in that ten
25 million dollars dealt with the issue of cigarette

1 smoking and health?

2 A. Mr. Edell, that's obviously a hypothetical
3 situation. If I didn't know it it would be very
4 difficult to communicate it. The monies that the
5 industry gave the AMA-ERF were an honest effort to
6 help get some answers to some very complex questions.
7 Certainly on the part of the industry was hoped to
8 be a very useful thing for mankind.

9 Q. Let's assume that it's a fact, sir.

10 A. That what's a fact?

11 Q. That only 50 percent of the work that was
12 funded through the AMA-ERF was relevant to smoking.
13 Don't you think that's something that should have
14 been communicated to the public when representations
15 were being made as to the gross amount the tobacco
16 industry funded through the AMA-ERF?

17 MR. NORTHRIP: I object to the form.
18 You've asked Mr. Bowling not to engage in
19 assumptions and we've asked him not to engage in
20 assumptions and I think that's an improper question.

21 MR. EDELL: This is an assumption based
22 upon fact, Mr. Northrip.

23 MR. NORTHRIP: If you have something to
24 support the fact.

25 MR. EDELL: I do have something to

1 support the fact. It came from your files.

2 MR. NORTHRIP: Why don't you show it to
3 him then.

4 MR. EDELL: I don't have to show it to
5 him. It's a fact that will be in evidence at the
6 time of trial.

7 MR. NORTHRIP: You have to if you're
8 going to ask that question.

9 MR. EDELL: I don't think so. Are you
10 going to direct him not to answer?

11 MR. NORTHRIP: I'll let him try to answer
12 it. If he has knowledge.

13 MR. EDELL: He's a communicator; he
14 should have an opinion.

15 MR. SHAPIRO: He should have all the
16 facts, too.

17 MR. EDELL: He does.

18 MR. SHAPIRO: Not necessarily.

19 MR. EDELL: Well, you'll clear that up on
20 cross, Mr. Shapiro.

21 MR. SHAPIRO: No, I think that's the
22 error with the hypothetical. It leaves out many
23 contingencies. Assuming that to be true, why that
24 was the case and a variety of other things that
25 might be relevant to a response that would not be

1 purely hypothetical.

2 (Pending question read by the reporter)

3 A. Now, your question would require me to make an
4 assumption?

5 Q. Yes. Assuming my statement concerning 50
6 percent is correct. We have the blessings of your
7 counsel as far as your assuming that.

8 MR. NORTHROP: Oh, no, there's no
9 blessings. I have not directed him not to answer,
10 but there is no blessing.

11 MR. EDELL: Okay. He's permitting you to
12 answer that question then, with that assumption.

13 A. To make an assumption.

14 Q. You don't have to make any assumption.

15 A. I thought you asked me to make an assumption.

16 Q. For the purpose of that question 50
17 percent is a true statement, sir.

18 A. Mr. Edell, you at some points tell me not to
19 assume and then you play games with assumptions.
20 Now, which point am I to follow which parts of your
21 instruction? It's very confusing.

22 Q. Mr. Bowling, I'm not playing games. I
23 wanted you not to assume or guess --

24 A. You just asked me to assume.

25 Q. Let me finish, sir. I give you that much,

1 give me that much. In the beginning of the
2 deposition I told you not to assume or guess.

3 A. That's correct, you did tell me that.

4 Q. In answering any question. Right?

5 A. You told me not to assume.

6 Q. That's right.

7 A. And then you've just asked me to assume. Which
8 am I to follow?

9 Q. If I give you an assumption that's based
10 upon a fact, I am permitted to do that. Your lawyer,
11 if it was inappropriate, would direct you not to
12 answer the question. So I'm not playing games. I'm
13 asking you an appropriate question and I would
14 request that you give me a response to the question
15 and not characterize my question. Okay? Would you
16 read the question back to the witness.

17 (Pending question read by the reporter)

18 A. Well, within the assumption you've asked me to
19 say should I have communicated something I didn't
20 know.

21 Q. Should the Tobacco Institute, should the
22 tobacco industry, should those spokespersons?

23 A. I thought you asked me if I would.

24 Q. No.

25 A. I don't know how anybody can communicate

1 memory?

2 Q. Yes.

3 A. Yes, it does, Mr. Edell.

4 Q. In what way, sir?

5 A. Well, this tells me the dates, the amounts.

6 Q. I was just talking about Dr. Wynder. Is
7 there any reference to Dr. Wynder other than the
8 paragraph that I read to you?

9 A. Well, you didn't read the full paragraph.

10 Q. I thought I did.

11 A. No. You left out a portion.

12 Q. What portion did I leave out?

13 A. Final part where it says as, "An indication of
14 the attention he," meaning Dr. Wynder, "received,
15 Time Magazine featured Wynder's attacks on
16 cigarettes with pictures on seven different
17 occasions."

18 Q. I don't think I read that paragraph, sir.
19 I think I read the following paragraph that
20 referenced Dr. Horsfall and Mr. Cameron. Didn't I
21 read that paragraph in its entirety, sir?

22 A. The paragraph that says that Sloan-Kettering
23 subjected Wynder to more rigorous screening
24 procedure before letting him speak in the name of
25 the Institute?

1 anything they don't know. In fact, that's one of
2 the great puzzlements of this whole area, those who
3 were opposed seemed to communicate a great number of
4 things they don't know which I don't happen to think
5 is right or useful in the whole controversy. So I
6 cannot communicate anything I don't know. I did not
7 know that. I told you I did not know that. You
8 have asked me to assume it's so and that's all that
9 I have available to me.

10 Q. Well, I'm asking you to assume that
11 that's a fact, sir, that only 50 percent of the,
12 quote, independent research funded through the
13 AMA-ERF by the tobacco industry was relevant to
14 smoking.

15 MR. NORTHRIP: Mr. Edell, this question
16 is becoming so vague.

17 MR. EDELL: It's only becoming vague, Mr.
18 Northrip, because the witness is evading a response.

19 MR. NORTHRIP: That's not correct.

20 MR. EDELL: I think it is correct.

21 MR. NORTHRIP: The question is vague.
22 You say somebody. Now you say it's not him that
23 you're asking about. You're asking somebody in the
24 industry should have conveyed without regard to who
25 that person is or without regard to what

1 representations may have been made about the purpose
2 of this research. I think the question has become
3 so vague that it is inappropriate to be answered and
4 I would instruct him not to answer it.

5 Q. Sir, are you aware that representations
6 were made to the public that millions of dollars
7 were being spent by the tobacco industry through the
8 AMA-ERF program to seek those answers of whether or
9 not cigarette smoking caused disease in man?

10 A. Yes, I'm aware of that. And of countless other
11 millions that have been spent on what we believe to
12 be honest, objective, independent research on the
13 question of smoking and health.

14 Q. I'm only talking about the AMA-ERF, not
15 the other millions that you spent.

16 In making those representations, from a
17 communicator's perspective, sir, don't you think it
18 would have been appropriate for the person making
19 those representations to advise the individuals who
20 receive that information that only 50 percent of the
21 studies funded through the AMA-ERF program were
22 relevant to the issue of whether or not cigarette
23 smoking caused disease in human beings?

24 A. Well, under the assumption, had I known that, I
25 would certainly have been much interested. I have

1 always assumed that all of that money was spent for
2 the purpose that I thought it was, which was
3 independent research into the question of smoking
4 and health.

5 Q. The question was not whether you're
6 interested, sir. The question was whether that
7 should have been communicated to the recipient of
8 the information.

9 A. Mr. Edell, I told you it's not possible or
10 shouldn't be. We as a practice do not communicate
11 things we don't know.

12 Q. Sir, I'm asking you to assume that the
13 tobacco industry knew it.

14 A. To my knowledge the tobacco industry did not
15 know it.

16 MR. NORTHRIP: Are you asking him to
17 assume that the communicator knew it?

18 MR. EDELL: I am asking him to assume
19 that the tobacco industry, through the Tobacco
20 Institute, knew that information. And I am asking
21 him whether or not it was inappropriate from a
22 communicator's perspective to leave out the fact
23 that only 50 percent of the studies funded by the
24 tobacco industry through the AMA-ERF were relevant
25 to smoking.

1 A. Mr. Edell, it probably is not proper for me to
2 try to phrase a question for you --

3 MR. SHAPIRO: You're absolutely right.

4 A. And I don't want to do that.

5 MR. VASSALOTTI: Just try to answer as
6 best you can, Mr. Bowling.

7 A. I think I've told Mr. Edell that the
8 communications of the Tobacco Institute are, to the
9 full extent of my knowledge, honest and truthful.
10 Now you're asking me to assume a fact that I don't
11 know to be so, I've never heard before.

12 Q. That's right.

13 A. And then you're asking me if that should be
14 communicated?

15 Q. That's right.

16 A. I'm telling you that I don't know how to
17 communicate facts that I don't know to be so, nor
18 will I communicate this.

19 Q. I'm asking you whether or not that should
20 have been communicated if that fact was known by the
21 Tobacco Institute.

22 A. Mr. Edell, let me simply tell you that it is my
23 position now and always has been that truth be
24 communicated. You can only communicate the truth
25 that is available to you.

1 Q. And that you should do that?

2 A. You should communicate the truth at all times.

3 Q. And that when you make a statement about
4 a gross amount being spent on certain studies
5 supposedly relevant to the issues of cigarette
6 smoking and health, to be truthful you should let
7 people know whether or not in fact those studies are
8 relevant, shouldn't you, sir, if you have knowledge
9 in that regard?

10 MR. DONATI: Object to the form. The
11 question was changed a little bit.

12 A. Obviously you communicate relevant facts, the
13 truth.

14 Q. Wouldn't it be relevant, sir, if 50
15 percent of the studies were not relevant to smoking?

16 A. Wouldn't what be relevant?

17 Q. The fact.

18 A. Would it be relevant?

19 Q. Yes.

20 A. I would have been shocked to have learned. I
21 told you that I have never heard until you have told
22 me this morning under this assumption. I had
23 thought this to be honest, open research. Now
24 you're telling me something different under this
25 assumption, which is a very confusing situation. I

1 don't know what, since I've told you I think very
2 clearly that I have believed that to be open, honest
3 research. I have told you that we communicate the
4 truth and that we do not communicate facts that we
5 don't know, unlike those that are opposed to smoking
6 have done. So I don't know what you're looking for
7 in this hypothetical assumption.

8 Q. All I want to know, sir, is whether or
9 not your opinion, the fact that only 50 percent of
10 the studies funded by the tobacco industry through
11 the AMA-ERF was relevant information that should be
12 communicated to the public. That's all I want to
13 know.

14 MR. NORTHRIP: Would you read that
15 question back, please.

16 (Pending question read by the reporter)

17 MR. EDELL: I'll rephrase the question.

18 Q. All I want, sir, is whether or not the
19 fact that only 50 percent of the studies funded by
20 the tobacco industry through the AMA-ERF was
21 relevant to the issue of smoking.

22 MR. DONATI: Object to the form.

23 MR. NORTHRIP: Object to the form.

24 A. All you want to know is is it relevant that
25 only 50 percent of the monies allocated to the

1 AMA-ERF for smoking and health research --

2 Q. Whether that's a relevant fact that
3 should be communicated to the public.

4 A. You're telling me something I didn't know.

5 Q. I understand that, sir.

6 A. Now, if that should be true in this hypothesis
7 or this assumption that you have said, and had I
8 known that, had I known, for example, continuing
9 your assumption, not mine, that half was for some
10 other research, then that would have been
11 interesting and I would have, my own instinct would
12 be to communicate that. If the industry was putting
13 up money for research into some other vexing,
14 pressing problem of mankind into research on
15 childhood diseases or something like that, then of
16 course, because our communications have always been
17 entirely open and honest. Now, we fund a great deal
18 of research.

19 Q. Now, sir, I wasn't talking about funding
20 of research dealing with children or anything like
21 that.

22 A. Well, Mr. Edell, I don't know under your
23 assumption what you are talking about. You're
24 telling me --

25 MR. NORTHRIP: Let's take a break.

1 MR. EDELL: Let's finish the questioning.
2 We're right in the middle of it and I think it's
3 inappropriate to stop.

4 MR. NORTHRIP: I asked you half an hour
5 ago for a break. We've gone on over a half-hour.
6 In fact, over a half-hour. Mr. Bowling has
7 responded to this question two dozens times. One
8 more question and let's take the break.

9 Q. What was your understanding, sir, of the
10 reason why the AMA-ERF committee was conducting
11 research funded by the tobacco industry?

12 A. The reason, as I understand it, Mr. Edell, from
13 the document that you showed me yesterday and from
14 my historic understanding was that they shared the
15 desire to have scientific knowledge, which is not
16 available to mankind.

17 Q. Regarding what, sir?

18 A. Smoking and health.

19 Q. And if 50 percent of those studies
20 weren't related to smoking, wasn't that an important
21 fact?

22 A. Mr. Edell, I did not know. You have asked me
23 to assume that.

24 Q. That's right. And if that assumption was
25 correct, wasn't that an important fact, sir?

1 A. I have told you and I'll tell you again that
2 had I known under this assumption that half was to
3 some other kind of research, then that would have
4 been communicated.

5 Q. Communicated to the public?

6 A. It would be within the same communication of
7 what does the industry fund. We do research of all
8 kinds. The research that I believe we're talking
9 about here is that massive amount that the industry
10 funds into smoking and health research. When we
11 fund research that is for better plant work, then we
12 announce that. Or if we fund research for some
13 other purpose, we announce that. That's honest, and
14 that's the way we've always been and we continue to
15 do that.

16 Q. And honesty would require, in the
17 instance that you represent, that all of the studies
18 that are being funded through the AMA-ERF are
19 pertinent to the issue of cigarette smoking and
20 health and if in fact you find out that 50 percent
21 aren't, that you should communicate that fact; isn't
22 that right, sir?

23 MR. NORTHRIP: I'm going to object to
24 that question because I believe you have changed the
25 assumption. You have been stating that the

1 announcements regarding smoking and health, you have
2 been making an assumption that the research did not
3 involve smoking. To me there is a clear distinction
4 and now you're changing your question.

5 MR. SHAPIRO: Mr. Northrip and Mr. Edell,
6 I think that the problem with hypotheticals is
7 demonstrated by this continuing colloquy and that is
8 they involve a myriad of contingencies and that's
9 why those questions are generally sustained by the
10 Court when there's an objection to them because
11 depositions are facts and you can ask a hypothetical
12 and you add another contingency that may not have
13 been thought of by the witness or not included in
14 the hypothetical which will change an answer
15 dramatically. They are unfair, they are not the
16 purpose at deposition. Deposition is for facts and
17 I think when you talk about these subtle changes in
18 your questions, this demonstrates why the
19 hypotheticals are inappropriate as a question.

20 MR. EDELL: Mr. Shapiro, you know and I
21 know that it's a fact that there's a document that's
22 been produced in this case that indicates that only
23 50 percent of the studies funded by the tobacco
24 industry through the AMA-ERF program were relevant
25 to smoking.

1 MR. SHAPIRO: Were thought by some people
2 to be relevant. We don't know what the other
3 studies dealt with. We don't know from the document,
4 that I recall, what the rationale was, why they
5 didn't feel them relevant. We don't know whether
6 the people doing the studies at the AMA felt that
7 they were relevant. We have none of these facts.
8 And I think before you can pose a question to this
9 witness that would elicit a fair answer, that
10 information should be there. And that's why I think
11 the hypothetical, while not intentionally deceptive,
12 potentially is. Because any answer to any of those
13 facts or questions that I raise might well affect
14 Mr. Bowling's answer to your question about whether
15 this should have been communicated to the public.

16 MR. EDELL: Well then you can clarify
17 that later on.

18 MR. SHAPIRO: I can't. I only have your
19 fact and the document which I believe you're
20 referring to and I can't clarify it.

21 MR. EDELL: Are you going to direct him
22 not to answer, Mr. Northrip?

23 MR. NORTHRIP: Mr. Edell, I feel that
24 this is an inappropriate type of inquiry now that
25 you have changed your question which I believe

1 changes your assumption because there is a
2 difference, in my opinion, between research relating
3 to smoking and health and research relating to
4 smoking, which was the original assumption you've
5 made. If you would now represent to me that this
6 document says 50 percent was not devoted to research
7 dealing with smoking and health, then I would allow
8 him to answer the question. If it simply says
9 research devoted to smoking, to me there's a
10 difference.

11 MR. EDELL: It's a question of how you
12 interpret the document, sir.

13 MR. NORTHRIP: Well, that's one of the
14 problems when you refuse to show him the document.

15 MR. VASSALOTTI: That's the document that
16 Mr. Shapiro just pointed out in the whole process of
17 this hypothetical.

18 MR. EDELL: The document says, "The
19 general opinion of the scientific representatives
20 was that not more than 50 percent of the program was
21 relevant to smoking." That means the program itself
22 was not relevant to smoking. Not that the studies
23 didn't deal with smoking, but that it wasn't
24 relevant to smoking.

25 MR. NORTHRIP: That's your interpretation

1 of it.

2 MR. EDELL: That's what it says.

3 MR. NORTHRIP: Yes, but your
4 interpretation is that it wasn't relevant in any way
5 to smoking and health. I think that's what you're
6 trying to say. And, for example, if a study
7 involved a particular disease associated with
8 smoking, looked into other causes, that could well
9 be relevant to smoking and health but not directly
10 to smoking. Now, I don't know.

11 MR. EDELL: Are you going to direct him
12 not to answer?

13 MR. NORTHRIP: I'm going to direct him
14 not to answer the question you just asked which I
15 believe characterizes the assumption that the study
16 was 50 percent not relevant to smoking and health,
17 and I don't think that is the assumption that you
18 have given us from the document. If you want to ask
19 him again whether it's smoking and health studies
20 represented and that the assumption is they weren't
21 related to smoking, whether that should have been
22 announced, we'll try it again.

23 Q. Sir, do you think the fact that the
24 general opinion of the scientific representatives of
25 the tobacco industries funding the AMA-ERF program

1 was that not more than 50 percent of the program was
2 relevant to smoking, was something that should have
3 been communicated to the public?

4 A. Mr. Edell, you're looking at a document I have
5 not been shown. You have asked me to make an
6 assumption about what scientists might have as an
7 opinion.

8 Q. That's right, sir. I want you to assume
9 that that statement was made by the scientific
10 research directors of the supporting companies of
11 the AMA-ERF program.

12 A. Was made by whom?

13 Q. The scientific representatives of the
14 tobacco company reporting the AMA-ERF program who
15 attended a presentation of the grantees at
16 Scottsdale, Arizona in May of 1970.

17 A. And they?

18 Q. And it was the general opinion of that
19 group that not more than 50 percent of the program
20 was relevant to smoking. Do you think that was a
21 fact that should have been communicated to the
22 public, sir?

23 A. I don't know who that group is or what was done
24 but as far as I knew or as far as I know the tobacco
25 industry, that 100 percent of the money was given to

1 do honest, objective research.

2 Q. That wasn't the question, sir. The
3 question is very simple. Whether or not in your
4 opinion the fact that the scientific representatives
5 of the tobacco companies supporting the AMA-ERF
6 program -- I'm sorry. Let me rephrase the question.

7 The question is very simple in terms of
8 whether or not the general opinion of the scientific
9 representatives of the tobacco companies supporting
10 the AMA-ERF program, that not more than 50 percent
11 of the program was relevant to smoking, was a fact
12 that should have been communicated to the public?
13 That's all I want to know.

14 A. Under this hypothetical assumption, is that
15 what you're saying?

16 Q. Under the document that was provided by
17 your attorneys as being a document from Philip
18 Morris's files.

19 MR. NORTHRIP: If you're going to rely on
20 the document then I'm going to insist on you showing
21 it to him.

22 MR. VASSALOTTI: I am confused also as to
23 which program is being referred to in that document,
24 program in Scottsdale, Arizona, the program as a
25 whole, the grantees who spoke at that particular

1 presentation or all of the grantees?

2 MR. EDELL: Are you going to direct him
3 not to answer the question?

4 MR. NORTHRIP: Yes, sir.

5 MR. EDELL: Okay. I have no further
6 questions then in that regard.

7 (Recess taken)

8 Q. Mr. Bowling, do you recall having any
9 contact with the Sloan-Kettering Institute?

10 A. Yes.

11 Q. What was that? Memorial Sloan-Kettering
12 Cancer Center, I'm sorry.

13 A. Yes.

14 Q. What was that contact, sir?

15 A. Sloan-Kettering is one of the principal cancer
16 research institutes in the world, I'm told, and the
17 company over a period of years made unrestricted
18 grants to Sloan-Kettering to further their work in
19 cancer research.

20 Q. Why was that done, sir?

21 A. Because we wanted to know, we wanted to find
22 the causes and cures for cancer.

23 Q. Did they help you in finding those clues
24 regarding the cause of cancer?

25 A. Did they help us?

1 Q. Yes.

2 A. The hope was they could help mankind.

3 Q. Well, in your opinion did they help
4 mankind?

5 A. Well, I'm not a scientist. But I am advised
6 that they are an important research organization and
7 the hopes of that was by giving support to such that
8 it might speed the process of finding the causes and
9 cures of cancer.

10 Q. And your position in 1962 and '63 dealt
11 with public relations, right, sir?

12 A. That was certainly part of of my assignment at
13 that time.

14 Q. Did any of your assignment deal with
15 science, research or any expertise in that area?

16 A. I'm not a scientist. I don't know how that
17 could be. I was active in the contributions program
18 which supports a lot of science.

19 Q. Why is the Public Relations Department
20 involved in contributions?

21 A. Virtually all departments are involved in
22 contributions.

23 Q. Well, who is Dr. Horsfall?

24 A. Dr. Frank Horsfall of Sloan-Kettering?

25 Q. Yes, sir.

1 A. Dr. Horsfall was a much respected scientist who
2 was at one time the head of Sloan-Kettering.

3 Q. Were you ever requested to give your
4 opinion, your thoughts regarding Philip Morris's
5 donations to the Sloan-Kettering Cancer Center?

6 A. Yes.

7 Q. And did the fact that Dr. Horsfall
8 expressed his doubts that smoking was implicated in
9 carcinoma causation have anything to do with the
10 donations made by Philip Morris to the Sloan
11 Kettering Memorial Cancer Center?

12 A. No. I would have been deeply interested in the
13 opinion of a scientist of his repute. We supported
14 the institution, not the individual.

15 Q. That's right. It was \$25,000 each year,
16 right?

17 A. I don't recall. It's considerably more than
18 that after we were able to afford it.

19 Q. Did you ever stop donating to the Sloan-
20 Kettering Cancer Center?

21 A. Not to my knowledge.

22 Q. Still do?

23 A. To the best of my knowledge.

24 Q. Did you ever attempt to publicize the
25 funding of Philip Morris to the Sloan-Kettering

1 Memorial Cancer Center?

2 A. Not to my knowledge.

3 Q. Did it have any public relations value,
4 sir?

5 A. Any public relations value?

6 Q. Yes.

7 A. What is that?

8 Q. The fact that Philip Morris was donating
9 to the Sloan-Kettering Institute.

10 A. I don't know what you mean by public relations
11 value. It was important, particularly, I think to
12 all of our people to know that the company was
13 supporting research as fully as it could.

14 Q. Do you know whether or not Dr. Wynder,
15 Erhest Wynder was associated with Sloan-Kettering?

16 A. Yes.

17 Q. Was he, sir?

18 A. He was at one time.

19 Q. Do you remember when he was associated
20 with them?

21 A. No, not specifically. He was at, I've been
22 aware he was in a number of places. That was one
23 of them.

24 Q. Did you ever attempt to bring pressure
25 upon Sloan-Kettering through contributions to place

1 some type of controls on Dr. Wynder?

2 A. No, not to my knowledge.

3 MR. EDELL: Mark this for identification,
4 please.

5 (Exhibit Bowling-37 marked for
6 identification)

7 Q. I'm going to show you a document, Mr.
8 Bowling, which has been marked as Bowling Exhibit 37.
9 It's a memorandum which is, I believe, prepared by
10 you to Mr. C.H. Kibbee. It came from your file and
11 I direct your attention to the last full paragraph:
12 "In the fall of 1962, Dr. Horsfall and other
13 Sloan-Kettering officials including public relations
14 vice-president Carl Cameron began subjecting Wynder
15 to more rigorous screening procedures before letting
16 him speak in the name of the Institute. This has
17 had a proper and pleasing effect." You can read the
18 rest of the document. See if that has a refreshing
19 effect on your memory with respect to the last
20 question.

21 MR. NORTHRIP: I appreciate your showing
22 him the document.

23 MR. EDELL: My pleasure, Mr. Northrip.

24 A. Thank you, Mr. Edell.

25 Your question is does this refresh my

1 Q. Yes.

2 A. Yes, you did, sir. In other words that would
3 be good to have a test for truth and objectivity and
4 I would approve of that, in this instance or any
5 other.

6 Q. Was Dr. Wynder any less than truthful and
7 objective prior to 1962?

8 A. I don't know that. I am not a scientist but I
9 do believe in scientific review and apparently that
10 was the process that was needed here.

11 Q. Are you finished with this document, sir?

12 A. Yes, I am. Thank you.

13 Q. You prepared this document, didn't you,
14 sir?

15 A. Yes, I did.

16 Q. You were the one who said, "He,
17 (Dr. Wynder)," that's mine.

18 A. That's which?

19 Q. The parenthetical is mine, sir.

20 A. So you're not reading from the document?

21 Q. Yes, I will be.

22 A. I'm sorry, that's confusing. Which part is
23 yours and which part is the document?

24 Q. I'm going to read you a statement, sir.

25 The parenthetical will be my naming the person that

1 you referred to as he. Okay? And you tell me
2 whether or not --

3 A. So you're reading the statement and going to
4 insert something in it; is that correct?

5 Q. Mr. Bowling, do you agree that Dr. Ernest
6 Wynder exploited his Sloan-Kettering association to
7 the industry's distinct disadvantage?

8 A. Yes.

9 Q. What industry?

10 A. The tobacco industry.

11 Q. And when you indicate over here, "This
12 has had a proper and pleasing effect," referring to
13 the more rigorous screening procedure of Dr. Wynder,
14 what were you referring to, sir?

15 A. To making certain that the process of
16 freelancing or speaking with the force of
17 institution was not done except where the truth and
18 other data produced by scientists was there.

19 Q. Are you telling us that Dr. Wynder was
20 not truthful before this more rigorous screening
21 process?

22 A. No, I don't know that Dr. Wynder was truthful
23 or untruthful. I have no reason to believe that Dr.
24 Wynder would not at all times give what his opinion
25 might be or his hope, but obviously in a complex

1 scientific area where there are massive questions,
2 it seems that it is important in the interest of
3 objectivity and science to be sure that what people
4 say, particularly when they purport to represent an
5 institution, have the institution subject that to
6 whatever the normal scientific procedure and test
7 for truth might be so that people are not misled.

8 Q. How do you know, sir -- strike that. Who
9 advised you, sir, that in the fall of 1962 a more
10 rigorous screening procedure was effected with
11 respect to Dr. Wynder?

12 A. In the fall of 1962, who advised me that it was
13 necessary?

14 Q. No. Who advised you that in the fall of
15 1962 a more rigorous screening procedure was placed
16 upon Dr. Wynder by Sloan-Kettering officials?

17 A. I don't know. It might have been Dr. Wynder.

18 Q. You've had discussions with Dr. Wynder?

19 A. Oh, yes.

20 Q. Regarding his studies?

21 A. Yes.

22 Q. Have you met with him?

23 A. Yes.

24 Q. To discuss his studies?

25 A. Yes.

1 Q. And he told you that Sloan-Kettering had
2 placed more rigorous screening procedures on him?

3 A. I don't know if it was Dr. Wynder or Dr. Wynder
4 and others. I don't believe that's attributed, is
5 it?

6 Q. No, it's not. That's why I asked you.

7 A. I don't recall. It was over 20 years ago.

8 Q. 20 years ago. Sir, the Contributions
9 Committee recommended that \$25,000 be contributed
10 annually to Sloan-Kettering for a three-year period
11 and that recommendation occurred in the fall of 1962,
12 didn't it?

13 A. According to that memo, yes.

14 MR. EDELL: Would you mark this for
15 identification, please.

16 (Exhibits Bowling-38 marked for
17 identification)

18 Q. Sir, I'm going to show you a document
19 which has been marked as Bowling-38 for
20 identification. It came from your file. It's
21 marked confidential. Appears to be a presentation
22 made by Paul A. Marks, M.D., President, Memorial
23 Sloan-Kettering Cancer Center, December 10, 1980.
24 Was this presentation only made to tobacco industry
25 personnel?

1 A. I haven't seen that yet. If you'd like to show
2 it to me.

3 Q. To your knowledge has Mr. Rockefeller
4 been employed by the tobacco industry?

5 A. Mr. Rockefeller?

6 Q. Yes.

7 A. Which Mr. Rockefeller?

8 Q. The Mr. Rockefeller who is on the Board
9 of Directors of Memorial Sloan-Kettering's Cancer
10 Center.

11 A. I don't know which Mr. Rockefeller that is.

12 Q. Well, do you have any idea why this is
13 marked confidential, sir, this presentation?

14 A. I haven't seen it. If you'd show it to me.

15 Q. I will certainly do that.

16 A. Do I know why that's marked confidential, is
17 that your question?

18 Q. Yes.

19 A. I didn't mark it confidential. I don't know
20 who did.

21 MR. EDELL: Is there a reason why that
22 was marked confidential, Mr. Northrip?

23 MR. NORTHRIP: Do you know, Chuck?

24 MR. WALL: Let me look at it.

25 MR. NORTHRIP: I would expect, Mr. Edell,

1 that in the course of meeting your request for Mr.
2 Bowling's documents on an expedited basis that
3 people who may not have been aware of the details
4 behind some of these documents may have gone through
5 them hurriedly, being largely Mr. Wall and myself,
6 and when in doubt marked confidential. If you can
7 show me a document that is public, obviously we'll
8 be happy to remove the marking as we've told you
9 before.

10 MR. EDELL: Mr. Northrip, when the
11 documents were to be produced, over a month ago,
12 they were being produced on an expedited basis.
13 That's not my understanding as to the manner in
14 which they've been produced recently. Certainly the
15 witness has had a chance to review all the documents.

16 MR. WALL: I'm sorry, but these were
17 produced on an expedited basis. We got them to you
18 as quickly as we could review them. Might be that
19 they were marked confidential because they were
20 expedited and they are in error. If they are in
21 error and they are public and shouldn't be we'll be
22 confidential happy to remove the confidential stamp.

23 MR. EDELL: The question is when are we
24 going to get to the point that we know what is
25 confidential and what's not?

1 MR. WALL: I think you can rest assured
2 all of them marked confidential are confidential.
3 If there has been an error we will remove it if you
4 call it to our attention or if we see it. It's no
5 effort on our part to mark confidential documents
6 that are in the public domain. Errors happen. I'm
7 sorry that did happen, if in fact that's the case.

8 MR. EDELL: Fine. Try to implement that
9 procedure.

10 Q. Do you recall receiving a copy of that
11 document, sir?

12 A. Yes.

13 Q. Take a look at Page 7. Do you recall
14 reading where it says, "Cancer of the lung is
15 largely due to cigarettes, a highly addictive habit"?

16 A. I haven't gotten to Page 7 yet.

17 Q. I'm not going to ask you questions about
18 any portions of the document, sir. If you want to
19 read it, that's your prerogative.

20 Are you going to read the whole document?
21 It's fine. I just wonder if I could take a break
22 and go to the men's room?

23 A. Well, you certainly have that right, Mr. Edell.

24 Q. Thank you very much. I appreciate it.

25 MR. EDELL: Would you mark this, please.

1 (Exhibit Bowling-39 marked for
2 identification)

3 Q. Mr. Bowling, have you had an opportunity
4 to review the document Bowling-38?

5 A. Yes, I have. Thank you, Mr. Edell.

6 Q. You indicated previously that Philip
7 Morris was contributing money to Sloan-Kettering in
8 order to seek the answers concerning cigarette
9 smoking and disease, correct?

10 A. No, I didn't say that, Mr. Edell.

11 Q. What did you say, sir?

12 A. I think I said that Sloan-Kettering is a highly
13 respected cancer research organization and that we
14 contributed to Sloan-Kettering, not because of
15 questions relating to cigarette smoking but because
16 they do work in cancer research and there have been
17 some various accusations against products in the
18 industry of which we're a part, and that we were
19 hopeful, as probably other supporters of
20 Sloan-Kettering, that somehow Sloan-Kettering might
21 be instrumental in helping find those answers, which
22 they have not done but we remain hopeful and we
23 continue to support Sloan-Kettering.

24 Q. Would you take a look at Page 7, sir.

25 A. Page 7, yes.

1 Q. Of Exhibit 38. Do you see where it says,
2 "Cancer of the lung is largely due to cigarettes, a
3 highly addictive habit." It's not on Page 7?

4 A. Yes, I see that.

5 Q. Did Philip Morris accept that conclusion
6 by the president of Sloan-Kettering?

7 A. Your question is did Philip Morris accept this
8 opinion of Dr. Marks?

9 Q. That's correct.

10 A. Well, it's not our practice to either accept or
11 reject.

12 Q. Well, did it solve the question in your
13 mind as to the causation issue, cigarette smoking
14 and lung cancer?

15 A. Not at all. If you have read Dr. Marks' speech
16 as I have just done, he spends most of it talking
17 about the enormous problems of trying to find what
18 causes cancer, advances a great number of theses or
19 theories and what he refers to as puzzles. Said the
20 central puzzle in understanding the cancer problem
21 is how agents such as chemicals, radiation, viruses,
22 alter the mechanisms. He obviously doesn't know but
23 he thinks that, he says that this center by its
24 tradition, by the support it has received, and its
25 particular position in the National Cancer Program

1 cannot escape the close and continuing scrutiny of
2 professional colleagues and the public and the need
3 for them to keep doing work to help find out
4 something about cancer.

5 Q. Sir, is there any qualification to his
6 statement that cancer of the lung is largely due to
7 cigarettes, a highly addictive habit? Any
8 qualification?

9 A. On Page 7?

10 Q. Yes.

11 A. On Page 7 he makes that as a flat-out statement.
12 But on Page 5 he says it somewhat differently
13 wherein he doesn't make it quite so unequivocally.

14 Q. Does he say that it's his hypothesis or
15 that it's a theory or that he considers it a fact?

16 A. Well, he refers to the vast majority of these
17 cancers are undoubtedly due.

18 Q. Due to what, sir?

19 A. Cigarette smoking.

20 Q. Do you reject that statement as being
21 true?

22 A. It's his opinion.

23 Q. No. Do you agree with it or disagree
24 with it?

25 A. I'm not a scientist. I don't think he knows.

1 If he says he doesn't know the cause -- if he knows
2 the causes of cancer and all things related then it
3 wouldn't be necessary to have such important
4 institutions as this. I don't think he knows, I
5 don't think anybody else knows the causes of cancer.
6 I think it's very important that somebody is trying
7 to find out. I would hope he'd be objective, I
8 would hope all people be objective in research.

9 Q. You were on the Board of Directors in
10 1980?

11 A. Of what?

12 Q. Philip Morris.

13 A. Yes.

14 Q. Did you consider that statement by the
15 president of the Sloan-Kettering Memorial Cancer
16 Center in deciding what the corporation's position
17 was in terms of cigarette smoking and lung cancer?

18 A. What is your question?

19 MR. EDELL: Would you read it back,
20 please.

21 (Pending question read by the reporter)

22 A. Which part of the statement, you mean when he
23 calls for research or when he says a flat-out
24 personal opinion?

25 Q. His professional opinion, sir. Isn't he

1 a profession? Is he an M.D.?

2 A. I would hope. He says he's an M.D.

3 Q. And Sloan-Kettering is world known, world
4 renowned as one of the finest cancer institutes in
5 existence, correct?

6 A. That is correct.

7 Q. Do you think they would hire an
8 unqualified individual to run it?

9 A. That's ridiculous, you know that. I would
10 never say such a ridiculous thing.

11 Q. But you reject the accuracy of his
12 opinion, do you not, sir?

13 A. I said that I'm not qualified to judge his
14 opinions, but they are only his opinions.

15 Q. Do you reject his opinion? You
16 personally?

17 A. I don't accept or reject his opinions, Mr.
18 Edell.

19 Q. If you don't reject his opinion, sir, why
20 then do you not communicate that opinion to the
21 public?

22 A. Mr. Edell, thousands of people here and around
23 the world say things every day as their opinion.
24 It's not my purpose in life to communicate all
25 opinions of anybody anywhere with which I'm not even

1 remotely connected, to anybody.

2 Q. You have spent hundreds of thousands of
3 dollars contributing to the Sloan-Kettering, correct?

4 A. That is correct, we do.

5 Q. And you recognize that Sloan-Kettering
6 was world renowned in terms of cancer research,
7 correct?

8 A. Yes, that's true.

9 Q. And you received a copy of the remarks of
10 the president of that institution, correct?

11 A. Yes, that's correct.

12 Q. And the remarks of the president of that
13 institution clearly indicate that it was his
14 professional opinion that cigarette smoking caused
15 lung cancer, correct?

16 A. He says in his opinion, yes.

17 Q. So we're not talking about somebody
18 anywhere around the United States or were not
19 talking about atomic bombs or something else. We're
20 talking about the president of Sloan-Kettering,
21 right, sir?

22 A. You're talking about the man identified here as
23 the president of Sloan-Kettering. Is your question
24 to me why I would not communicate his remarks?

25 Q. From a public relation perspective do you

1 think it would help Philip Morris's business to
2 communicate that information?

3 A. Mr. Edell, people at Sloan-Kettering told me
4 they thought cigarettes didn't cause lung cancer. I
5 didn't communicate that. Why would I communicate
6 this? I don't communicate the work of
7 Sloan-Kettering. That's their obligation and that's
8 the process of which Dr. Marks was obviously engaged
9 at the time he did this. He's perfectly free to
10 make remarks and obviously did.

11 Q. You don't think that it's the
12 responsibility of Philip Morris to inform people who
13 use their products of all pertinent information
14 regarding cigarette smoking and lung cancer?

15 MR. DONATI: Objection to the form.

16 A. Your question is do I think --

17 MR. EDELL: Read it back, please.

18 (Pending question read by the reporter)

19 A. Mr. Edell, the Congress of the United States
20 has judged what is pertinent and that is a matter of
21 law and we have always abided by that.

22 Q. Sir, how many millions of dollars does
23 the Tobacco Institute spend on advertising, quote,
24 the other side of the controversy?

25 A. Oh, I don't know.

1 Q. Have you spent at least a million dollars
2 on that?

3 A. When you say the other side --

4 MR. SHAPIRO: Object to the form.

5 Q. The tobacco industry's position, that
6 cigarette smoking, the link between cigarette
7 smoking and lung cancer hasn't been proven. Isn't
8 that the other side? Isn't that the industry's
9 position, sir?

10 MR. NORTHRIP: Object to the form on
11 industry position.

12 Q. Is that Philip Morris's position, sir,
13 that the link between cigarette smoking and lung
14 cancer has not been proven?

15 A. That is the position, yes.

16 Q. Is it the Tobacco Institute's position,
17 also?

18 A. I think that's the position of science which is
19 in turn, believed by the Tobacco Institute as well
20 as this company.

21 Q. Some scientists, not all, correct?

22 A. Mr. Edell, I don't think any -- to the best of
23 my knowledge no one knows the cause of cancer.

24 Q. Is it your testimony, sir, that there are
25 no scientists who believe that cigarette smoking

1 causes lung cancer? Is that what you're saying?

2 A. Of course not, Mr. Edell.

3 Q. Okay. Are there medical doctors who
4 believe that cigarette smoking causes lung cancer?

5 A. Yes, there are.

6 Q. Getting back to the original question,
7 sir, has the Tobacco Institute spent money in
8 conveying to the public its position with respect to
9 cigarette smoking and lung cancer?

10 A. I don't specifically recall them spending money
11 on, I think you said on advertising, so much on
12 smoking and health or lung cancer. If you have some
13 document or something that might refresh me.

14 Q. You were with or you were associated in
15 your capacity as a representative from Philip Morris
16 with the Tobacco Institute from 1958 through at
17 least 1982, right? '84, I'm sorry. Correct?

18 A. Through part of '84.

19 Q. And you can't remember any instance in
20 which the Tobacco Institute conveyed to the public
21 through advertising that the issue of cigarette
22 smoking and lung cancer is still an open question?

23 A. Oh, I think the Tobacco Institute attempted to
24 convey but your question was about advertising.

25 Q. They never advertised to the best of your

1 knowledge to that effect, sir?

2 A. Well, I'm trying to place, Mr. Edell, the
3 advertising. You talked about the other side. The
4 advertising that comes to mind is the smoker non-
5 smoker.

6 Q. That's all you remember?

7 A. Well that's all I specifically recall. I said
8 if you can show me.

9 MR. NORTHRIP: Let's not move to any
10 other documents. We're going to finish up here
11 today with this one.

12 MR. EDELL: I'm not going to show him
13 another document.

14 Q. Do you recall the Tobacco Institute in
15 forms other than advertising conveying to the public
16 that the causal relationship between cigarette
17 smoking and lung cancer has not been proven?

18 A. Yes.

19 Q. And how has that been done?

20 A. A variety of ways. Over the years I've heard,
21 seen statements to that effect, speeches.

22 Q. Why is that done, sir? Why don't they
23 convey to the public thoughts such as those
24 expressed by Dr. Paul Marks as referred to in
25 Bowling-38 regarding the causal relationship between

1 cigarette smoking and lung cancer?

2 A. Thank you for that question.

3 Q. You're welcome.

4 A. The reason, perhaps, has to do with a long and
5 troubled history wherein people have talked about
6 things known or not known. An example in fairly
7 recent history would be the case of the belief,
8 which is exactly identical to this sort of belief --

9 Q. Tuberculosis?

10 A. On tuberculosis. That became an incredible
11 tragedy of science and extremely harmful to mankind
12 because they literally quit looking for the real
13 cause of TB because people, quote, knew cigarettes
14 caused TB, unquote, and it turns out not to have
15 been so.

16 Well, a lot of scientists tell me that
17 today they're right about the same place, that
18 people are saying things as if they are so and they
19 don't know that they're so. And that people have
20 become persuaded and the public is overwhelmingly
21 convinced that the charges are true and that that,
22 from the standpoint of honest, objective science, is
23 very hurtful. Therefore, it's important for there
24 to be some honest voice that keeps calling for
25 research so that the answers truly are known so we

1 don't have a repeat of the TB type circumstance.

2 Q. I see. So you rely upon sources other
3 than the Tobacco Institute to relate to the public
4 opinions such as those expressed by Paul Marks,
5 correct?

6 MR. DONATI: Objection to the form.

7 A. What is your question? Do I rely on sources
8 other than Tobacco Institute? Is that your question?

9 Q. No. Why is it, sir, that the Tobacco
10 Institute only informs the public as to what its
11 position is concerning cigarette smoking and health
12 and why doesn't it reiterate the position of
13 individuals such as Paul Marks, M.D.?

14 A. Is your suggestion that Dr. Marks needs their
15 help in bringing forth his opinions? Because he
16 seems to be very capable of doing that on his own.

17 Q. How do you know that the people who
18 consume your product are aware of Dr. Marks'
19 comments?

20 A. I'm not. I'm not aware they're aware of Dr.
21 Marks or even that there is a Tobacco Institute. I
22 am aware that the public is overwhelmingly persuaded
23 that the case against cigarettes has been closed and
24 it seems to me that that's a very bad thing for the
25 work of a Dr. Marks who complains that he's having

1 trouble getting funding for cancer research and
2 there is clearly a great need for that. So it seems
3 to me that's a problem for people to think something
4 is known when it is not known.

5 Q. So the Tobacco Institute at least, of
6 which Philip Morris has been a member, relies upon
7 sources other than itself to convey the opinions of
8 people such as Dr. Marks to the general public
9 regarding cigarette smoking and its relationship to
10 lung cancer; is that correct?

11 MR. DONATI: Objection to the form.

12 MR. NORTHRIP: Objection to the form of
13 the question.

14 A. Well, if I understood your question, Mr. Edell,
15 on the communication, is that your question?

16 Q. That's right, sir.

17 A. Of information on cancer. There are vast
18 numbers of institutions and organizations around
19 this country, around this world who communicate
20 constantly on this subject and the Tobacco Institute
21 tries to be aware of who's saying what on the
22 subject and what relevance that might have and the
23 people here do, too. Every day we have stacks of
24 comments as they've appeared in the press and
25 various places and opinions of people here and there

1 on health related subjects. Great numbers of people
2 communicate constantly on that subject. If your
3 question was why wouldn't the Tobacco Institute
4 communicate an opinion of Sloan-Kettering or an
5 employee of Sloan-Kettering, Sloan-Kettering is
6 perfectly capable of doing that for themselves, and
7 do.

8 MR. EDELL: I have no further questions
9 on this subject right now.

10 (Deposition adjourned at 1:00 p.m.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

436

I, NANCY C. BENDISH, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination the witness and/or witnesses were sworn by me to testify the truth, the whole truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.



Notary Public of the State of New Jersey
Certificate Number 836
My commission expires May 11, 1986.

Dated: _____